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MAGISTRATE's GUIDE;

AND

CITIZEN's COUNSELLOR:

Being a digested Abstract of those Laws of the State of Maryland *most necessary to be known, and most useful in common transactions of life.*

INTERSPERSED WITH A VARIETY OF

PRACTICAL FORMS AND *PRECEDENTS*;

FOR THE USE OF

JUSTICES OF THE PEACE AND OTHERS.

BY

JOHN B. COLVIN.

FREDERICK-TOWN, (MD.)

1805.

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District of Maryland, To Wit:

BE it remembered, that on the eleventh day of February, in the twenty-ninth year of the Independence of the United States of America, John B. Colvin, of the said district, hath deposited in this office the title of a book, the right whereof he claims as author, in the following words, to wit: "*A Magistrate's Guide; and Citizen's Counsellor:* Being a digested Abstract of those Laws of the state of Maryland most necessary to be known, and most useful in common transactions of life. Interspersed with a variety of practical Forms and Precedents; for the use of Justices of the Peace and others. By John B. Colvin." In conformity to the act of the Congress of the United States, entitled, "An Act for the encouragement of learning by securing the copies of Maps, Charts, and Books, to the Authors or Proprietors of such Copies, during the times therein mentioned."

PHILIP MOORE, Clk. D. C.

INTRODUCTION.

AN occasional attendance upon our courts of justice, where I have often witnessed a lamentable want of legal information among that class of citizens who constitute the major part of the community, together with the strong recommendation of a friend, originally induced me to undertake the present compilation; and the approving avidity with which the idea of such a work was received by the public throughout the state of Maryland, urged me to complete it with all possible rapidity.

In reflecting upon the controversies that have agitated the public of late, respecting law, lawyers, and legal establishments, my mind has arrived at this conclusion; that to prevent the impositions of the dishonest part of the bar, the only effectual method is to enlighten the minds of the people, by giving them that clear view of the administration of justice, as well as a knowledge of the leading laws of the land, which would enable them to avoid those snares which their passions and ignorance of such affairs too frequently lead them into. It matters not what institutions are organized for administering justice, so long as the body of the community remain unacquainted with the principles by which such establishments are governed, and the provisions of those legislative acts to which they give force; for there will always be impostors and knaves where there is any thing for them to work upon. A book of this kind, therefore, cannot fail of having a beneficial effect.

Although I am aware that this work is considerably deficient in many particulars, which time and greater opportunities may furnish to another compiler, still I feel a conviction that this *essay* to disseminate legal information among my fellow-citizens will be of essential service to them; and it will have a tendency to render the proceedings of our magistracy generally more correct and uniform, by affording them the means of drafting their precepts in a more legal and proper shape than heretofore.

Gentlemen of the bar seem to be impressed with an idea, that works of this kind are made for *their* use and convenience alone: In this instance, I beg leave to declare, that I have not labored for *them*. I have neither the vanity to believe nor the confidence to hope, that my humble toils should afford one solitary ray of light to the understandings of those who have for years together made the laws their peculiar study. And, therefore, as I have not presumed to teach wisdom to Solomon, I devoutly pray that my book may escape the partial criticisms of unfriendly critics. As for the tribe of pettifoggers, (whom I do not rank with the *gentlemen* of the bar,) their opinions are of no consequence to me: It would be cruel to deprive them of the privilege of fault-finding, and they are welcome to exercise their ingenuity on the pages of this work till they get wiser.

It is for the *mass* of the people that I have compiled a "GUIDE AND COUNSELLOR;" for those whose leisure and means for the acquirement of knowledge of this kind have been small; and who feel an awkwardness on first getting into public office for want of information; or who have suffered, or are likely to suffer, on account of their being unacquainted with the "rules of civil conduct, which prescribe what is right and prohibit what is wrong."

In arranging the work, I have to regret the want of a more regular organization; but for the want of method, I have endeavored to atone in some measure by a copious index. Had I earlier attained those lights which I acquired towards the conclusion of the book, I should probably have observed more regularity, and perhaps propriety, with respect to the distribution of matter under the several heads, or titles: As it is, I have pursued generally the alphabetical order laid down by Mr. Kilty in his index to the laws, to which I am free to acknowledge that I am much indebted for a more ready comprehension of the acts of assembly than I could have otherwise attained.

Whatever errors the book may contain, I trust they will find a sufficient apology in the novelty of the undertaking. It is the *first* of the kind ever published in Maryland, and therefore it cannot be expected that it should be so complete as a future edition might prove, after its omissions and mistakes have been corrected by experience. I have, however, spared no pains to procure all the

information within my reach on every matter upon which I have touched; and I have made use of books of established character, records, and the information of sensible men, whenever and wherever I could obtain them, to render the compilation correct and complete.

With respect to bonds, I wish to impress it particularly on the minds of those who are desirous to gain an accurate knowledge of such things, that in forming the *obligation*, where two persons are bound, it is always *safest* to introduce after the words "*we bind ourselves*," the words "*jointly and severally*," or the words "*and each of us*:" This is not observed in *all* the bonds laid down in the following work, and therefore the more necessary to be mentioned here. But there may be those who are opposed to giving bond in such manner; and that was one reason why I varied the forms. Yet let it be noticed, that the words "*jointly and severally*" ought not to be used when the words "*and each of us*" are introduced, as that would be tautology; although I have known men hackneied in the forms of office use both expressions in one obligation. This, however, only proves that they know nothing of the force of language; and I merely mention it to prevent others from following the example.

Of surveyors I have not deemed it material to treat particularly, except as relates to marking and bounding lands, &c. They are generally of that class of men who have learning and understanding enough to acquire a knowledge of the laws from the acts of Assembly at large, with as much facility, and much more completely than they could from an abridged statement of the laws respecting them.

In cases of bastardy, I have not laid down any particular form of examination where the woman comes *voluntarily* forward and discovers the father of the child: But as such cases may occur, the justice before whom the examination is taken, can use the form in page 142, and may, if he pleases, introduce the word *voluntary* between the words "The" and "examination."

In treating of coroners, I did not state that justices of the peace might act as such in their respective counties when called on. This, I believe, is the practice in many of the counties of this state. But the power of a justice, acting as coroner, does not extend to his jurisdiction as an officer for serving writs, summoning jurors, &c.

In page 104, it is said that "A warrant may be granted

in extraordinary cases by the privy council," &c. To prevent any misunderstanding of this passage, it is necessary to state that it has reference to the privy council of Great-Britain; and was inadvertently introduced from Blackstone, in treating of the power of granting warrants.

The appeal bond from a magistrate's judgement ought to have *two* sureties to it, although I find that in many instances it has been the practice to take but one: And indeed, excepting the necessity of conforming to the words of the law, the reason of the thing shews that one good surety in such a case is sufficient.

In the 9th page of this work, under the head "*Accounts*," it is stated that "Any deed, will," &c. "will be considered as sufficiently proved by a *certificate* from the keeper," &c. It ought to read "*certificate*" *under seal*; for a certificate offered as evidence in court, *without a seal*, would not be admitted: Elsewhere, every purpose is answered without it.

In the 12th page, speaking of the limitations of actions on accounts, &c. it is said that they "must be brought within three years, *otherwise they are not recoverable.*" It is true, they are not recoverable, *at the option of the debtor*; because, if he pleads the act of limitation the debt is lost; but if on a suit he neglects to plead it, the debt is recoverable at any time.

In the 24th page, the form of the *fi. fa.* varies a little from that customarily used. It is nevertheless a good one. The twelve and an half cents inserted are intended as *the cost of issuing the fi. fa.* These words follow; "*And the additional costs hereon.*" If the twelve and an half cents had been omitted, and the words "*and the additional costs hereon*" had followed the words "*of May last*," the form would be equally complete; inasmuch as *the additional costs*, generally mean and include *all costs after judgement.* However, as it stands, it is more particular, and the words are only redundant.

In page 164, the signatures of commissioners for proving boundaries are omitted at the end of the return. They must always sign their return, after all the depositions have been taken and certified by them.

With regard to precepts by justices of the peace, I think one general rule ought to be uniformly observed. I allude to the commencement of each. In all those which convey a *command*, and carry with them the idea of *force*, I conceive the words *State of Maryland*, ought to

precede the words "—— *County, To Wit:*" And in all those which are merely matter of record, and consequently of a *passive* nature, the words "—— *County, To Wit:*" are quite sufficient. A little reflection will shew the propriety of this distinction. Whatever carries with it a command, and supposes a necessity for the use of force, should have on its face the expression of that power which is to support its execution; whilst that which is merely passive requires nothing more than a mention of the county, by way of date: Of the first description are all executions, writs, warrants, and the like: Of the latter, are recognizances, probats, &c. This rule may be objected to by many in the case of recognizances, where the parties are bound to the state; but in my apprehension it would be much more correct to leave out the name of the state in the case of recognizances as well as in that of probats; for although the parties be bound to the state, there can be no propriety in prefixing the name at large to the act by way of date, when the name of the county is much more precise and specific, and particularly as the name of the state is always mentioned in the body of the recognizance. This idea did not occur to me in time, or I should have conformed the precedents to it. However, it is only an *opinion;* and those who make use of the book may follow the method or not as they may deem most proper.

The foregoing observations I have thought it necessary to make by way of explanation. There are doubtless other trivial imperfections which time and closer inspection will develope. It is more or less the case with every work published.

I have no hesitation in believing that my book will meet with a candid reception from men of sense of all parties and sentiments. My only motive has been a strong desire of imparting usesul information, and I trust that my intentions will be duly appreciated.

THE COMPILER.

DEDICATION.

The subscriber respectfully dedicates the following work to his fellow-citizens of the State of Maryland.

J. B. COLVIN.

FREDERICK-TOWN, (MD.)
July 10th, 1805.

ACCEPTANCE.

PUNISHMENT FOR FORGING, RECEIVING, &c.

IF any person or persons in the state of Maryland shall forge, or aid in forging, or cause to be forged, or in any manner assist in forging or counterfeiting any bill of exchange or draught for the payment of money or delivery of goods, or other valuable articles, with intention to defraud any person, on being convicted thereof in any court of law within the state, he or they shall be adjudged a felon, and shall suffer such punishment as shall be adjudged by said court, so as the same do not extend to death, or more than seven years servitude. *Laws of Maryland, Nov. session*, 1799, *chap. 75*, *s.* 2. By the same act, *s.* 3, stealing, or receiving stolen bonds, notes, or other securities for the payment of money, is made felony, and punishable as aforesaid.

ACCOUNTS.

VARIOUS KINDS OF EVIDENCE ADMISSIBLE, &c.

ANY debt of record made or entered in any other of the United States, or in any foreign country whatever, can be proved by an exemplification of the record under the hand of the keeper of the same, and the seal of the court or office where such record may be made. 1785, *c.* 46, *s.* 1.

Any deed, will, or instrument of writing, which is required to be recorded or registered by the laws of any of the United States, or of any foreign country, will be considered as sufficiently proved by a certificate from the keeper of such record or register, declaring such deed, will or instrument of writing to have been duly and properly recorded, and will be received as evidence in any court of this state; and a copy of any deed, will, or other instrument of writing, lodged for safe-keeping in any office or court, agreeably to the laws of the state or country as aforesaid, will in like manner be admitted as evidence of their validity when certified as aforesaid. 1785, *c.* 46, *s.* 2.

Record entries of deeds, in any county court, when transmitted to the clerk of the general court, and by him properly recorded, shall be received as evidence of such deeds in all the courts of this state, in case the original shall have been lost or detroyed; and the judges of the general court may, in their discretion, admit such record entry as evidence

of the validity of a deed, whether the original deed be destroyed or not; provided that no such record entry shall be admitted in evidence if the party against whom the same is intended to be used shall give the other party notice a term before the trial of the cause, to produce the original deed, or a full copy of the same from the record. 1785, c. 9, s. 7.

An attested copy, certified under the seal of office, of any will, testament, or codicil, recorded in any office authorised to record the same, shall be admitted as evidence in any court of law or equity, provided that the execution of the original will or codicil be subject to be contested until probat hath been had according to the act of 1798, No. 101. *See said act*, c. 2, s. 4.

Any deed, will, bond, bill, note, or other instrument of writing, executed in any other of the United States, or in any foreign country, which by the laws of said states or country, are not required to be recorded or registered, must be proved by the oath or affirmation of the subscribing witnesses to the same, or any of them, taken before any court, judge or justice, or other officer of the state or country where such deed, will, bond, bill, note, or other instrument, hath been executed; accompanied by a certificate from the governor, chief magistrate, or other proper officer, declaring that the court or officer before whom such oath or affirmation was administered, had authority to administer the same, and that such oath or affirmation had been duly made before such court, judge, justice, or other officer. If all the witnesses to any deed, will, bond, bill, note, or other instrument, should die before their execution be proved, then proof by a credible witness must be adduced to the hand-writing of the party making such deed, or to the hand-writing of the subscribing witnesses to the same, or of any of them, to be taken and certified as already described. In case any person brings suit upon any such instrument of writing proved as aforesaid, to recover any money or other valuable thing specified therein to be due, the party bringing such suit at or before the first imparlance court, must make oath or affirmation before some judge or justice of this state, or before some court, judge, justice, or officer of the state or country where such instrument in writing has been executed, having proper authority, which must be certified by the governor, chief magistrate, or other officer, duly authorised, that the debt or other valuable thing, claimed by virtue of such instrument is justly due, and that no part thereof hath been satisfied, or in any manner paid, except what is credited, to the knowledge or belief of the party bringing the suit. 1785, c. 46, s. 3

Open accounts against deceased persons are to be proved in the manner before stated; in addition to which it is required by an act of 1798, 101, *c.* 9, *s.* 8, that there must likewise be annexed a certificate of the oath or affirmation of the creditor, taken after the death, that the account as stated is just and true, and that he (or she) hath not received any part of the money stated to be due or any security or satisfaction for the same, except what (if any) is credited.

The oath or affirmation of any disinterested witness being an inhabitant of the United States, or of any foreign country, is evidence of the delivery of goods, merchandise, or any other articles to the person charged with the reception of them; and likewise such disinterested witness as aforesaid, shall, upon oath, be evidence of the value of the goods and of the assumption of the person to whom such goods may have been delivered, to pay for the same; the oath to be made before some magistrate duly appointed, and certified by a competent officer. But the person bringing the suit must likewise make oath to the truth of his account or charges before some judge, justice, or officer of the state or country where he resides, at or before the first imparlance court; and that he believes the goods or other things were *bona fide* delivered as charged, and that he hath not been paid for any part thereof or in any manner satisfied for the same more than what has been duly given credit for upon the account, to which said oath or affirmation must be annexed; and that he hath received no security or satisfaction for the same. 1785, *c.* 46, *s.* 4.

The oath or affirmation of any clerk, store-keeper, or disinterested credible person, taken before any judge or justice, or court of this state, to the delivery or payment of any money, or delivery or sale of any goods, wares, merchandises, effects or chattels, by any person merchandising, or carrying on commerce or any trade whatsoever by buying and selling, or manufacturing for sale within this state to any person within this state, is good and sufficient evidence in any court of this state to charge the person to whom the money or goods shall have been paid or delivered; and shall likewise be good evidence to prove the prices of the goods or other articles sold or delivered, and also to prove the assumption of the receiver, or any person claiming under him to pay for the same, provided such oath or affirmation be made within twelve months from the date of the articles respectively paid or delivered; and provided that the person bringing suit for the same (if suit be brought) shall at or before the first imparlance court make oath that he hath received neither security nor satisfaction for the same. 1785, *c.* 46, *s.* 5.

The manner of proving accounts as prescribed in this chapter, does not deprive the debtor or defendant from controverting such proof by any testimony which is legal and admissible by the rules of the common law; and the creditor, in like manner, is not prevented from adducing other legal proof admissible by the rules of the common law. 1785, *c.* 46, *s.* 6.

When any suit is brought on a judgement, or on any bond, or other writing sealed by the party, and the defendants shall have any demand or claim against the plaintiff, upon judgement, bond, or other instrument under seal, or upon note, agreement, assumpsit, or account proved, the defendant shall be allowed to file his account in bar, or plead discount to the plaintiff's claim, and judgement shall be given for the plaintiff for the sum only which remains due after just discount made, provided the sum which shall remain due after such discount be sufficient to support a judgement in the court where the cause may be tried, according to its established jurisdiction; and in all cases of suits upon simple contracts, the defendant may file an account in bar, or plead discount of any claim he may have against the plaintiff, properly proved, which may be of an equal or superior nature to the plaintiff's claim, and judgement shall be given as aforesaid. 1785, *c.* 46, *s.* 7.

In all actions brought in a court of law of this state, grounded upon an account, or in which it may be necessary to examine and determine on accounts between the parties, it is lawful for the court where such action may be or remain for trial, to order the accounts between the parties to be audited and stated by an auditor or auditors to be appointed by such court, and there must be such proceedings thereon as in cases of actions of accounts. 1785, *c.* 80, *s.* 12.

Actions on accounts (excepting such as concern the trade and merchandise between merchant and merchant, their factors and servants, not resident in the state) must be brought within three years, otherwise they are not recoverable by law. 1715, *c.* 23, *s.* 2.

The House of Delegates may examine and pass all accounts of the state, relating either to the collection or expenditure of the revenue, and appoint auditors to state and adjust the same. *Constitution, a.* 10.

[There has a certain error obtained with many, the effects of which may at times prove prejudicial to both creditors and debtors, and it is thought advisable to explain it in this place, to wit: Many believe that a creditor is compelled by law to present his account and demand payment therefor previously to bringing an action for the recovery of the same; but this is not the fact. It was formerly the case,

by an act of 1729, but the provision was repealed by a law of 1735.]

Any one justice of the county wherein the debtor doth reside, may and shall hear and determine the matter in controversy, where the real debt and damages do not exceed ten pounds current money, or one thousand pounds of tobacco. 1791, *c.* 68, *s.* 1.

Form of a Probat of an account.

———— County, To Wit:

On this [twentieth] *day of* [January, 1804,] *before me the subscriber, one of the Justices of the Peace in and for said County, appears* [James Jones] *and makes oath on the holy Evangely of Almighty God, that the above* [or foregoing] *account is just and true as it stands stated; and that he hath not, directly or indirectly, received any part or parcel thereof, security, or satisfaction for the same, except what is credited, or, except an account in bar* [as the case may be] *to the best of his knowledge.* J. S.

Form of a Probat of any claim on open account, againſt a deceaſed perſon.

———— County, To Wit:

On this [twentieth] *day of* [January, 1804,] *being since the death of* [James Jones] *before me the subscriber, one of the Justices of the Peace in and for said county, appears* [Joseph Jenks] *and makes oath on the holy Evangely of Almighty God, that the foregoing* (or *above*, as the case may be) *account as stated is just and true; and that he hath not received any part of the money stated to be due, or any security or satisfaction for the same, except what* (if any) *is credited.* (In case the nature of the business requires it, the concluding part of the oath may run thus—*except an account in bar on the books of the deceased, the amount not known to him.*) *Witness my hand.* J. S.

This oath is founded on a law of 1798, No. 101, *c.* 9, *s.* 8.

(Any claim on account, exceeding £.10 current money must, in a court of justice, be established by a disinterested witness; nor can any person prove his account for more than £.10 in the course of any whole year's dealing; the voucher of which must be an account with the above oath annexed. See law of 1785, *c.* 46, *s.* 8.)

Form of a Probat of a ſpecialty againſt a deceaſed perſon, to wit: bond, note, or proteſted bill of exchange.

———— County, To Wit:

On the (twentieth) *day of* (January, 1804,) *being since the death of* (James Jones) *before the subscriber, one of the Justices of the Peace in and for said county, appears* (Joseph Jenks) *and makes oath on the holy Evangely of Almighty God, that no part of the money intended to be secured by the within,* (above or annexed, bond, note, or order, as the case may be) *hath been received, or any security or satisfaction given for the same, except* (if any thing) *what is credited.* (If the nature of the case require it, the oath may terminate thus—*except an account in bar, the amount not known to him.)* *Witness my hand.* J. S.

(The voucher to a specialty shall be the instrument itself, or (if lost) a proved copy. To the same the above oath must be annexed. If the creditor is an assignee, the same oath is required ; and so on with successive assignees, with respect to the time of each assignment. See law of 1798, No. 101, *c.* 9, *s.* 4.)

Form of a Probat of a claim for rent, againſt a deceaſed perſon.

———— County, To Wit:

On this (twentieth) *day of* (January, 1804) *being since the death of* (James Jones) *before the subscriber, one of the Justices of the Peace in and for said county, appears* (Joseph Jenks) *and makes oath on the holy Evangely of Almighty God, that no part of the sum due for said rent, or any security or satisfaction for the same hath been received, except* (if any) *what has been credited.*

Witness my hand. J. S.

(The voucher of a claim for rent shall be the lease, or acknowledgement in writing, or proof of at least one disinterested creditable witness, establishing the contract and the lapse of time since the rent was due. If the creditor be an assignee, the same oath of the original creditor with respect to the time of assignment, is required. See law of 1798, No. 101, *c.* 9, *s.* 7.)

Form of a Probat of a judgement againſt a deceaſed perſon.

———— County, To Wit:

On this (twentieth) *day of* (January, 1804,) *being since the death of* (James Jones) *before the ſubſcriber, one of the Juſtices of the Peace in and for ſaid county, appears* (Joſeph Jenks) *and makes oath on the holy Evangely of Almighty God, that he hath not received any part of the ſum for which the within (above, annexed,* or *foregoing,* as the case may be) *judgement was paſſed, except ſuch part* (if any) *as is credited.* (If aſſigned to ſome other perſon the oath ſhall go on thus) *and that to the beſt of his knowledge or belief, no other perſon hath received any parcel of the ſaid ſum, except ſuch part* (if any) *as is credited.*

Witneſs my hand. J. S.

This oath is founded on the law of 1798, No. 101, *c.* 9, *s.* 1. An aſſignee muſt produce the aſſignment, under the hand of the aſſignor; and if there hath been more than one aſſignment, each aſſignment ſhall be produced under the hand of the party. 1798, No. 101, *c.* 9, *s.* 2. If there be more than one creditor, the whole oath or affirmation aforeſaid, with the other vouchers, ſhall be ſufficient. *s.* 3.

[A special bail having paid the judgement, and producing aſſignment or receipt, is conſidered a judgement creditor. The voucher or evidence of a judgement muſt be a ſhort copy thereof under ſeal of office, if above £.10, in any court, certified by the clerk that there is no entry of ſatisfaction for the ſaid judgement.]

Having thus far laid down the methods and forms of eſtabliſhing the truth of different claims, it is now neceſſary to purſue the ſubject of Accounts, by pointing out the mode and forms of enforcing payment of the ſame. For the recovery of all debts under £.10 currency, recourſe muſt be had to a Juſtice of the Peace, who, at the inſtance of the creditor, will forthwith iſſue a *Warrant* under his hand and ſeal, in manner and form following:

Form of a Warrant for a debt under ten pounds.

State of Maryland, ———— County, To Wit:

Take into your cuſtody the [body or bodies] *of* [Joſeph Jones, or Joſeph Jenks and James Jones] *and have* (him or them) *before ſome Juſtice of the Peace of ſaid county, on*

the (twentieth day of January, 1804,) *to answer* [Jacob Junks] *in a plea of debt, and make return hereon on the* [twentieth] *day aforesaid, and have you then and there this warrant. Given under my hand and seal, the* [fifteenth) *day of* (January, 1804.) J. S. *(Seal.)*

To any Constable.

All warrants and executions shall be made returnable at a certain day, not exceeding forty days after the test thereof, before the justice issuing the same, or some other justice of the peace for the same county, who by law are authorised and required, upon application of the party, to call upon the constables for such returns, and, in case of non-payment by any constable who admits the receipt of any debt or demand, it shall and may be lawful for the justices to give judgement, and award execution forthwith, against such constable, directed to the sheriff of the county where the said constable resides. 1791, *c.* 68, *s.* 6. In fixing the return day of the warrant, a justice of the peace ought to be governed by circumstances, such as the distance of the residence of the debtor from where the creditor dwells, the probability of the debtor's running away, and so forth.

The warrant being given into the hands of the constable for the hundred where the debtor resides, the constable is obliged forthwith to serve the same, and make return thereon upon the day mentioned in said warrant. He must give notice to the plaintiff or his agent, where either of them lives in the same hundred, of the time and place he intends to carry the defendant before a justice; and, in case neither the plaintiff, having notice as aforesaid, nor any person for him, shall appear on the return of the warrant, or shall make default in not appearing at the time and place appointed, the justice may, in his discretion, hear and determine the matter of controversy *ex parte*. 1791, *c.* 68. *s.* 3.

If the plaintiff lives out of the hundred where the defendant resides, and he doth not appear, with or without notice, either in person or by agent, on the return day of the warrant, the justice may, in his discretion, in like manner, hear and determine the matter in controversy *ex parte*.

In all cases where the debt or demand exceeds twenty shillings common money, or one hundred pounds of tobacco, and either plaintiff or defendant shall think him or herself aggrieved by the judgement of any magistrate, he or she shall be at liberty to appeal to the next county court, before the justices thereof, who are, upon the petition of the appellant, in a summary way, empowered and directed to hear the allegations and proofs of both parties, and deter-

mine upon the same according to the law of the land, and the equity and right of the matter, the same court in which the said petition shall be exhibited, without any further continuance or delay, unless it shall appear to the satisfaction of the said court, that further time ought to be given to the party applying for the same, to enable the said court to determine the cause according to the law of the land, and the equity and right of the matter, either of the said parties may demand a trial by jury, or leave the cause to be determined by the court, at their election. 1791, *c.* 68, *s.* 4.

No execution upon judgement rendered by any justice, shall be stayed or delayed, or any *supersedeas* upon such judgement granted upon any appeal, unless the person appealing, or some other on his or her behalf, shall, immediately upon making such appeal, enter into bond, with sufficient sureties, such as the justice by whom judgement shall be given shall approve of, in double the sum recovered, in manner and form following:

Bond of Appeal from a Magistrate's judgement above 20s. agreeably to a law of 1791, *c.* 68, *s.* 5.

Know all men by these presents, that we (Peter Piper) *and* (David Draper,) *both of* (————) *county, are held and firmly bound unto* (Frederick Fidler) *of county aforesaid, in the sum of twelve pounds ten shillings current money, to be paid to the said* (Frederick Fidler) *or to his certain attorney, executors, administrators or assigns, to which payment well and truly to be made and done we bind ourselves, our executors and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this* (————) *day of* (May, 1804.)

Whereas (Frederick Fidler) *obtained a judgement for the sum of* (six pounds five shillings) *current money, and four shillings and ten pence costs, against the said* (Peter Piper) *before* (John Schley) *on the* (————) *day of* (May 1804) *and the said* (Peter Piper) *conceiving himself aggrieved by the said judgement, hath prayed an appeal to our next county court before the justices thereof. Now the condition of the above obligation is such, that if the above bound* (Peter Piper) *shall not prosecute this appeal at the next county court with effect, according to the directions of the act, entitled "An*

act for the speedy recovery of small debts out of court, and to repeal the act of assembly therein mentioned;" and also pay and satisfy unto (Frederick Fidler) *his executors, administrators or assigns, in case the said judgement shall be affirmed, as well the debt, damage and costs adjudged by* (John Schley) *from whose judgement this appeal is made, as also all cost and damage that shall be awarded by the court before whom this appeal shall be heard, tried and determined; then this bond to be and remain in full force and virtue, otherwise to be of none effect.*

(P. P.) Seal.
(D. D.) Seal.

Signed, sealed and acknowledged before me,
J. S.

After giving such appeal bond, it is necessary for the person appealing from the magistrate's judgement, to file a petition, which may be expressed in the following words:—1791, *c.* 68, *s.* 4.

Form of a Petition to the Juſtices of a County Court, to be filed by a perſon appealing from a Magiſtrate's judgement.

TO THE HONORABLE THE JUSTICES OF —— COUNTY COURT.

The petition of [A. B.] *humbly sheweth, That your petitioner hath, on the* [twentieth] *day of* [May, 1804] *had a judgement rendered against him, in favor of* [C. D.] *by* [J. S.] *one of the justices of the peace for the county aforesaid; which said judgement your petitioner states to be manifestly erroneous and unjust, and from which he hath appealed to the honorable the county court of the county aforesaid: Your petitioner therefore prays that your honors will take his case into consideration, and grant him such relief as to your honors shall seem meet; and he, as in duty bound, will pray, and so forth.*

[July 5th, 1804.] [A. B.]

Frequently witnesses may be wanting, or the parties not prepared to make good their allegations immediately on the appearance of a defendant, so that a further time may be necessary to examine into the matter of controversy, it is provided, that when any defendant shall be brought on warrant before any justice of the peace, such justice *may, if he*

in his discretion shall think fit, give and allow to such defendant a future certain day, *not exceeding fourteen days*, to appear before such justice, or any other justice of the same county, at a certain place to be appointed, to answer unto such warrant, such defendant giving good and sufficient security, if such justice shall award it necessary, by way of recognizance, in the nature of bail, for the defendant's appearance at the time and place appointed, and paying what he shall be condemned in on the said warrant, or surrendering his person to prison in satisfaction thereof; or in default of the defendant's giving such security, to commit such defendant to the constable, to be delivered over to the sheriff's custody till he gives such bail. 1791, *c.* 68, *s.* 2.

Form of Recognizance to be taken by Justices of the Peace from Defendants brought before them on Warrants, where the cause depending cannot be fully determined on the return-day of such Warrant.

STATE OF MARYLAND, ——— COUNTY, TO WIT:
(A. B.) Plaintiff,
against
(C. D.) Defendant.

You (E. F. or if the justice deems two persons necessary, E. F. and G. H.) *do* (jointly and severally, if more than one) *acknowledge yourself* (or yourselves) *bail for the said* [C. D.] *at the suit of the said* [A. B.] *in an action of debt*, [or damages, as the case may be] *on warrant, brought by the said* [A. B.] *against the said* [C. D.] *on condition that the said* [C. D.] *make his personal appearance before* [J. S.] *a justice of the peace for said county, on the* [twentieth] *day of* [May, 1804] *to answer to the said* [A. B.] *the plea of debt* [or damages, as the case may be] *specified in said warrant; then this recognizance of bail to be void and of none effect; otherwise to be and remain in full force and virtue in law. He* [or they, as the case may be] *acknowledges* [or acknowledge] *himself* (or themselves) *to be content therewith, this* (sixth) *day of* (May, 1804) *before*

J. S.

And if the defendant shall not appear at the time and place appointed, judgement may be rendered against him on such default, or on an *ex parte* hearing, if the justice does not see cause to the contrary; and if judgement shall be in any manner rendered against the principal debtor, and he does not pay such condemnation, or render himself on execution to be issued, returnable at the end of forty days from the issuing thereof, a warrant shall and may be issued, and recovery and execution had, against such bail, in the same manner as against principal debtors, saving to such bail all manner of defence that special bail in courts of law are entitled to on the return of the first or second *scire facias*, and the liberty of delivering up the principal debtor, on return of such warrant, on payment of costs on the same warrant. 1791, *c.* 68, *s.* 2.

In case the presence of any witness should be required by the plaintiff or defendant, and such witness will not attend without a summons, the magistrate may thereupon, at the request of the party, issue his summons as follows:

Form of a Summons.

STATE OF MARYLAND, —— COUNTY, TO WIT:

You are hereby commanded to summon (A. B.) *to be and appear before me, or some other justice of the peace for said county, to testify for* (C. D.) *against* (E. F.) *in an action of debt on warrant. Hereof fail not, and make return hereon on the* (twentieth) *day of* (May, 1804); *and have you then and there this precept. Given under my hand and seal this* (eighteenth) *day of* (May, 1804).

To any Constable. J. S. Seal.

When a witness is brought before the magistrate, previously to receiving his testimony, the magistrate shall administer to such witness the following oath.

Form of an oath to be administered by a Magistrate to a witness testifying in a case of debt, or damages.

You make oath that the evidence which you shall give in the matter now depending before me between (A. B.) *and* (C. D.) *shall be the truth, the whole truth, and nothing but the truth. So help you God.*

In case a witness does not attend upon summons, the magistrate may issue an attachment, and compel his attendance, and in his discretion, the magistrate may fine such witness any sum not above twenty shillings. 1801, *c.* 42.

Attachment for the non-attendance of a Witness before a Justice of the Peace, agreeably to Summons.

STATE OF MARYLAND, —— COUNTY, TO WIT:

You are hereby commanded to attach (Tom Tinker) *and have him before me, or some other justice of the peace in and for said county, to answer unto the state of Maryland for a contempt by him committed, in not attending as a witness for* (A. B.) *against* (C. D.) *before the subscriber, after being thereto legally summoned. Fail not to make due return hereon on the* (twentieth) *day of* (July, 1804.) *Given under my hand and seal this* (twentieth) *day of* (June, 1804.)

J. S. Seal.

To [J. B.] *Constable.*

The money arising from fines imposed on witnesses for non-attendance before a justice of the peace, is to be paid over to the clerk of the county court in each county.

Upon full hearing of the allegations and evidences of both parties, a justice of the peace shall give judgement according to the laws of the land and the equity and right of the matter, and, if need be, charge the constable with the body of the debtor in execution, who is obliged and empowered to carry the person so committed to the sheriff of the county, together with a certificate or mittimus from such justice, wherein shall be certified the debt and cost whereof such person shall be convict, by him to be safely kept until satisfaction or other end thereof; or otherwise, that such justice, or any other justice of the peace for the same county, shall, within one year from the time of the rendition of the said judgement, award execution thereon, (directed to the sheriff of the county where the defendant resides) by warrant or mittimus, in the nature of *capias ad satisfaciendum*, *fieri facias*, or otherwise; and that in case, upon the return of any warrant, on any complaint, issued by any such justice, it shall appear that the person against whom the same shall issue is not to be found, it shall and may be lawful for the creditor to proceed in the several and respective

county courts, for obtaining an attachment, according to the directions of the act (1715, c. 40) for issuing out attachments in this state, and limiting the extent of them, against the goods, chattels, and credits, of such person, for any sum not exceeding ten shillings or fifty pounds of tobacco.—1791, c. 68, s. 1.

If the constable to whom any warrant is delivered shall not make return thereof according to the command of the same, it shall be lawful for the justice who issued the said warrant, upon application of the plaintiff, or of his agent or attorney, and proof made of the delivery of the said warrant, by the confession of the said constable, or by the oath or affirmation, as the case may require, of the said plaintiff, his agent or attorney, or any other credible witness, to call such constable before him, and, unless a good excuse is offered, fine him for said neglect, any sum not exceeding seven shillings and six pence; and if any constable shall make due return of any warrant, by which it shall appear that he has taken the body of the defendant, and shall fail to produce him to the justice before whom the warrant shall be returned, it shall be lawful for the said justice to fine the said constable for such offence, any sum not exceeding seven shillings and six-pence, and such justice may appoint another day, not exceeding fourteen days from the return-day of the said warrant, for producing the body of the defendant; and in case the said constable shall not produce the body of the defendant on the appointed day, it shall be lawful for the said justice, at the request of the plaintiff, his agent or attorney, to enter judgement for the plaintiff for the amount of his debt, and costs, against such constable, on which judgement an execution may be issued by the said justice, directed to the sheriff of the county, as aforesaid; provided, that it shall always be in the discretion of such justice, on due proof made that the constable could not produce the body of the defendant, because the said defendant was too ill to be removed, or for any other good cause, to appoint any other reasonable time for producing him, in which case he shall have power to enter judgment, and to issue execution against the said constable on default of producing the body of the defendant, in the manner before directed; and provided also, that before any execution shall be issued against the said constable, the plaintiff, or his agent or attorney, shall make it appear to the satisfaction of the said justice, that he has made or tendered to the said constable an assignment of his cause of action against the defendant. 1791, c. 68, s. 11.

In case any sheriff shall neglect to make due return of any execution directed to him by virtue of law, it shall be lawful for the justice who issued the said execution, on proof of the delivery of the writ of execution to the said sheriff, or either of his deputies, to fine such sheriff for every such neglect, any sum not exceeding ten shillings current money; and in case any sheriff shall make due return of any execution directed to him as aforesaid, by which it shall appear that he has taken the body of the defendant, and shall fail to produce him, it shall be lawful for the justice before whom the said writ of execution is returned, at the request of the plaintiff, his agent or attorney, at any time within sixty days from the return-day of the said execution, to enter judgement for the plaintiff against the said sheriff for the amount of the debt and the costs, on which judgement execution may be issued, directed to the coroners of the county, or either of them, who are hereby required to execute the same; provided that such judgement shall not be entered until proof shall be made, on oath or affirmation, as aforesaid, that the debt and costs have been demanded by the plaintiff, his agent or attorney, of the said sheriff, and that he hath refused or neglected to pay the same. 1791, *c.* 68, *s.* 12.

Form of a *Ca sa.*

STATE OF MARYLAND, —— COUNTY, TO WIT:

You are hereby commanded to take [A. B.] *if* [he] *shall be found* [and him] *safe keep, so that you have* [him] *before some justice of the peace for said county, on the* (fourteenth) *day of* (July) *next, to satisfy* (C. D.) *the sum of* (five pounds current money debt, and four shillings and tenpence costs) *for which* (a) *judgement to the said* (C. D.) (was adjudged by the subscriber*) *a justice of the peace for said county, on the* (fourteenth) *day of* (April) *last past,* (as to me it appears) *and likewise* (twelve and an half cents, and the) *additional cost hereon, fail not at your peril, and make return hereon on the day aforesaid, and have you then and there this writ. Witness my hand and seal the* (fourteenth) *day of* (June, 1804.) J. S. Seal.

To any Constable.

* If by another magistrate, insert his name, instead of "the subscriber."

Form of a *Fi Fa*

STATE OF MARYLAND, —— COUNTY, TO WIT:

You are hereby commanded, that of the goods and chattels of *(A. B.)* you cause to be made a sufficiency to satisfy unto *(C. D.)* as well the sum of *(five pounds currency debt, and four shillings and ten-pence costs)* for which *(a)* judgement to the said *(C. D. was adjudged by the subscriber*)* a justice of the peace for said county, on the *(fourteenth)* day of [*May*] last, as also [*twelve and an half*] cents, and the additional cost hereon: Fail not at your peril, and make return hereon before some justice of the peace for said county, on the [*fourteenth*] day of [*July*] next, and have you then and there this writ. Witness my hand and seal the *(fourteenth)* day of *(June*, 1804.) J. S.

To any Constable.

** Or if before another justice, the name of such justice ought to be introduced in lieu of "the subscriber."*

No execution for the body or goods of any person or persons in this state, shall issue on any judgement rendered by a single magistrate, provided such person or persons shall go before any justice of the peace of the county wherein such judgement shall be obtained, within two months after the rendition of such judgement, and, together with security, such as the justice shall approve of, confess judgement for the debt, and costs of suit adjudged, with stay of execution, which confession shall be in manner and form as follows, and shall be signed by the justice taking the same, and certificate thereof shall be procured under his hand, which shall be a sufficient *supersedeas*. 1791, *c.* 67, *s.* 3.

Form of a Supersedeas.

You *(A. B. and C. D.)* do confess judgement to *(E. F.)* for the sum of *(fifteen shillings and one penny current money, debt, and four shillings and four-pence half-penny costs)* which were recovered by the said *(E. F.)* against *(A. B.)* on the *(sixth day of May*, 1804, *before the subscriber)* the said sum of *(fifteen shillings and one penny current money debt, and four shillings and four-pence half-penny costs)* to be levied of your bodies, goods or chattels, lands or tenements, for the use of the said *(E. F.)* in case the said [*A. B.*] shall not pay and satisfy to the said *(E. F.)* the said

[*fifteen shillings and one penny currency debt, and four shillings and four-pence half-penny costs*] so as aforesaid recovered against him, with the additional costs thereon, on the [*sixth*] day of [*November*] next. They acknowledge themselves to be content therewith, the [*sixth*] day of [*May*, 1804]

Before J. S.

Witnesses attending before a justice of the peace, shall be entitled to two shillings and six-pence current money per day for each day's attendance, and no more. 1791, *c.* 68, *s.* 7.

If any sheriff, against whom judgement shall be entered as aforesaid, shall satisfy the plaintiff the amount of his debt and costs; he shall have the same remedy against the defendant, on the plaintiff's judgement against him, as the plaintiff himself might originally have had. 1791, *c.* 68, *s.* 13.

Any justice may issue execution for any fine imposed by him, in the nature of *capias ad satisfaciendum*, or *fieri facias*, directed to the sheriff, or coroner, as the case may require, and the same shall be applied towards defraying the county charges. 1791, *c.* 68, *s.* 14.

Any justice of the peace before whom supersedeas shall or may be taken, or any justice of the peace of the same county, may and shall, at the request of the plaintiff, or any other person authorised by or on behalf of the plaintiff, issue execution by way of *capias ad satisfaciendum* or *fieri facias* against the principal debtor and his securities, or against either of them, after the expiration of the time mentioned in the supersedeas. 1801, *c.* 62, *s.* 2.

Form of a *Ca fa* upon Supersedeas.

STATE OF MARYLAND, —— COUNTY, TO WIT:

You are hereby commanded to take [A. B. and C. D.] *if* [they] *shall be found* [and them] *safe keep, so that you have* [them] *before some justice of the peace for said county, on the* (18th) *day of* (July) *next, to satisfy* (E. F.) *the sum of* (five pounds current money debt, and four shillings and four pence half-penny costs) *for which* (they) *confessed judgement to the said* (E. F.) *in a supersedeas before* (G. H.) *a justice of the peace for said county, on the* (fifth) *day of* (December) *last past,* (as to me it appears) *and likewise* (twelve and an half cents, and the) *additional cost hereon; fail not at your peril, and make return hereon on the day aforesaid, and have you then and there this writ. Witness my hand and seal the* (18th) *day of* (June, 1804.) J. S. Seal.

To (*any Constable, or the Sheriff of said county.*)

Form of a *Fi Fa* upon a Superſedeas.

STATE OF MARYLAND, —— COUNTY, TO WIT:

You are hereby commanded, that of the goods and chattels of (*A. B. and C. D.*) you cause to be made a ſufficiency to ſatisfy unto (*E. F.*) as well the ſum of (*five pounds current money debt, and four ſhillings and four-pence half-penny coſts*) for which (*they confeſſed*) judgement to the ſaid (*E. F. in a Superſedeas before G. H.*) a juſtice of the peace for ſaid county, on the (*fifth*) day of [*December*] laſt, [*as to me it appears*] as alſo [*twelve and an half*] cents, and the additional coſt hereon: Fail not at your peril, and make return hereon before ſome juſtice of the peace for ſaid county, on the [*eighteenth*] day of [*July*] next, and have you then and there this writ. Witneſs my hand and ſeal the (*eighteenth*) day of (*June*, 1804.)

To (any Conſtable, or the Sheriff of ſaid County.) } J. S. Seal.

Any conſtable duly appointed and qualified according to law, is authoriſed and empowered to ſerve and levy executions iſſued by a juſtice of the peace on judgements obtained for ſmall debts out of court, in the ſame manner and by the ſame proceſs as the ſheriffs or their deputies are by law authoriſed to do, and to receive the ſame fees that the ſaid ſheriffs are entitled by law to receive for the ſame ſervices. 1801, *c.* 62, *ſ.* 3.

All writs of execution muſt be ſued out within a year and a day after the judgement is entered; otherwiſe it is concluded, *prima facie*, that the judgement is ſatisfied and extinct; yet, however, a writ of *ſcire facias* will be granted, in purſuance of ſtatute Weſtminſter 2, 13 Edward I. *c.* 45, for the defendant to ſhew cauſe why the judgement ſhould not be revived, and an execution had againſt him; to which the defendant may plead ſuch matter as he has to allege, in order to ſhew why proceſs of execution ſhould not be iſſued; or, the plaintiff may ſtill bring an action of debt, founded on the dormant judgement; which was the only method of revival allowed by the common law. *Blackſtone's Commentaries*, *c.* 26, *p.* 422—*2d American edit.*

Where any judgement obtained before a ſingle magiſtrate ſhall have continued for more than one year, and the ſaid judgement had not been paid or ſatisfied, it ſhall and may be lawful for the juſtice before whom the ſaid judgements had been obtained, or any other juſtice of the peace for

the county, to revive the same by a writ of *scire facias*, which shall be made returnable on a certain day, not exceeding forty days from the time of issuing the same to the said justice, or to any other justice of the peace of the same county; and any constable properly qualified, of the hundred, or of the same county, is authorised and required to serve such writ of *scire facias*, and make due return thereof on the return day mentioned in the said writ, in the same manner, and entitled to the same fee, and liable to the same penalty, as in the case of a warrant issued by a single magistrate, according to the law in such case made and provided. 1801, *c.* 62, *s.* 4.

Form of a *Scire Facias*.

The State of Maryland to [*J. B.*] Constable, greeting:

Whereas on the [*twentieth*] day of [*June*, 1804, *A. B.*] recovered judgement on warrant against [*C. D.*] before [*me the subscriber, or E. F.*] a justice of the peace for Frederick county, for the sum of [*six pounds*] current money debt, and four shillings and four pence half-penny costs, as it appears by reference to the aforesaid judgement rendered, and now the said [*A. B.*] hath stated to me that although the judgement thereof hath been given, yet execution for the debt and costs aforesaid still remains to be made for him, wherefore the said [*A. B.*] hath requested a writ *scire facias* to be issued to carry the said judgement into execution: You are therefore commanded that by good and lawful men of your county you give notice to the said *(C. D.)* that he be and appear before me or some other justice of the peace for the county aforesaid on the *(twentieth)* day of *(September next)* to shew if he hath or can say any thing for himself, why the said *(A. B.)* ought not to have his execution against him for the debt and costs aforesaid, according to the force and effect of the judgement aforesaid, if he the said *(C. D.)* shall think fit, and further to do and receive what the justice of the peace before whom this writ shall be returned, shall then and there consider concerning him in this behalf: And have you then and there this writ, and the names of those by whom you shall give him notice as aforesaid. Given under my hand and seal this *(second day of October*, 1804.)

J. S. Seal.

Made known in presence of *(M. B.)* }
(and J. D.) }
(J. B.) Constable.

Revival of a Dormant Judgement on return of a *Scire Facias*.

Upon this *(twentieth)* day of *(September*, 1804*)* the premises being before me returned, on deliberation thereupon had, it is adjudged by me that *(A. B.)* have execution against *(C. D.)* for the debt and costs mentioned in the within *scire facias*, according to the judgement therein mentioned, as also the sum of four shillings and four pence halfpenny costs which he the said *(A. B.)* hath sustained by reason of the delay of the execution of the judgement within mentioned. Witness my hand and seal.

J. S. Seal.

No justice of the peace of this state, before whom supersedeas on any judgement rendered by a single magistrate hath been taken, shall make return of any such supersedeas to the office of the said county court, for the purpose that the same should be recorded or filed therein by the clerk of the said county. 1801, *c.* 62, *s.* 1.

If any person whatsoever, not being a citizen of this state, and not residing therein, shall or may be indebted to a citizen of this state, or of any other of the United States, or if any citizen of this state, being indebted unto another citizen thereof, shall actually run away, abscond, or fly from justice, or secretly remove him or herself from his or her place of abode, with intent to evade the payment of his or her just debts, such creditor may, in either case, make application to any judge of the General Court, justice of the county court, or justice of the peace; and on the oath or affirmation of such creditor, made before any of the judges or justices aforesaid, or before any judge of any other of the United States, that the said debtor is *bona fide* indebted to him or her in the sum of ——, over and above all discounts, and at the same time producing the bond or bonds, bill or bills, protested bill or bills of exchange, promissory note or notes, or other instrument or instruments of writing, account or accounts, by which the said debtor is so indebted, and also, (in the case of the debtor not being a citizen of this state) on the oath or affirmation of the said creditor made as aforesaid, that he or she doth not reside therein, and also, (in the case of the debtor being a citizen of this state,) on the oath or affirmation of the said creditor made as aforesaid, that he or she doth know, or is credibly informed and verily believes, that the said debtor is actually run away or fled from justice, or removed from his or her place of abode, with intent to injure and defraud his or her creditors, the

said judge or either of the justices as aforesaid, is fully authorised and required forthwith to issue his warrant to the clerk of the general or of the county court, as the case may require, to issue an attachment or attachments against the lands, tenements, goods, chattels, and credits, of the said debtor; upon the receipt of which warrant, together with the proofs on which the same was granted, *and not otherwise*, the clerk of the general or of the county court, (as the case may require) shall issue such attachment or attachments, in which there shall be the same clause of *scire facias* as is directed to be inserted in attachments awarded by either of the said courts, and the like process and proceedings shall and may be had thereon as are required and prescribed by the said act upon attachments awarded by the act of 1715, *c.* 40. 1795, *c.* 56, *s.* 1.

Form of a Warrant for Attachment to issue, agreeably to the law of 1715, *c.* 40, as directed by act of Assembly of 1795, *c.* 56.

STATE OF MARYLAND, —— COUNTY, TO WIT:

On this (eleventh) *day of* (June, 1804) *before the subscriber, one of the justices of the peace in and for said county, appears* (A. B.) *and makes oath on the holy Evangely of Almighty God, that* (C. D.) *a citizen of the state of Maryland is* bona fide *indebted to him in the sum of* (ten pounds one shilling and nine pence) *current money, over and above all discounts, that he is credibly informed and verily believes that the said* (C. D.) *is actually run away* (or, fled from justice, or removed from his place of abode, as the case may be) *with intent to injure and defraud his creditors.*

J. S.

At the time the above oath was granted, *(A. B.)* produced before me a bond *(or note, or account, as the case may be)* by which it appeared that the said *(C. D.)* is indebted as aforesaid, and upon which bond *(or note, or account, or whatever it may be)* the said oath was granted.

You are hereby directed to issue an attachment against the lands, tenements, goods, chattels, and credits of *(C. D.)* lying and being in said county, to satisfy unto *(A. B.)* of the same county, the sum of *(ten pounds one shilling and nine-pence)* current money, over and above the costs for prosecuting this attachment, according to the directions of

the act of assembly, entitled "An act directing the manner of suing out attachments in this province, and limiting the extent of them," and also of "A supplement to the act" aforesaid. Given under my hand and seal this (*sixth*) day of (*March*, 1804.)

J. S. Seal.

To *W. R.* Clerk of
—— County Court.

If the debtor is not a citizen of the state of Maryland, the oath must run thus—*that he doth know* (or is credibly informed and verily believes) *that the said* (C. D.) *is not a citizen of this state, and that he doth not reside therein.*

Form of a Writ of Attachment from a County Court.

——— County, To Wit.

The State of Maryland to the Sheriff of —— county greeting:

Whereas (*J. S.*) gentleman, a justice of the peace for the said county by his warrant, under his hand and seal, bearing date the (*sixth*) day of (*March*, 1804) did authorize and require the clerk of ——— county court, to issue an attachment against the lands, tenements, goods, chattels, and credits of [*C. D.*] to satisfy unto (*A. B.*) the sum of [*ten pounds one shilling and nine-pence*] current money, and all incidental costs, according to the direction of the act of assembly entitled "an act directing the manner of suing out attachments in this province, and limiting the extent of them," and also of "a supplement to the act" aforesaid.

Which warrant, together with the proofs on which the same was granted, are filed of record in —— county; you are therefore hereby commanded to attach the lands, tenements, goods, chattels, and credits of the said [*C. D.*] if they shall be found in your bailiwick, to the value of the said sum of [*ten pounds one shilling and nine-pence*] and one thousand pounds of tobacco for incidental costs, and when you have the same so attached or any part thereof the same in your custody safe keep, so that you have the same before the justices of the next county court to be held at the court-house in —— town, in and for said county, on the first Monday of [*August*] next, and there to be condemned according to law, to and for the use of the said [*A. B.*] unless the said [*A. B.*] by himself or his attorney shall appear and answer unto the said [*A. B.*] in a plea of [*debt, trespass upon the case or otherwise as the case may be*] according to law, and

that by good and lawful men of your bailiwick, you make known unto the person or persons in whose hands you make the same attachment, that he she or they be and appear before the justices of the next county court to be held as aforesaid, to shew cause, if any he, she, or they have, why the same lands, tenements, goods, chattels; and credits, so atttached in his, her, or their hands, ought not to be condemned, and execution thereof had and made according to the direction of the acts of assembly aforesaid, if to him, her, or them, it shall seem meet, and how you shall execute this writ, that you make known unto the said justices at the day and place aforesaid and have you then and there this writ. Witness [*W. C.*] Esq. chief justice of the said court, the [*sixth*] day of [*August*, 1804]

Issued the [*7th*] day of [*August*, 1804.]

R. N. Attorney. W. R. Clerk.

In a case of debt for any sum exceeding ten shillings current money, or fifty pounds tobacco, and not exceeding ten pounds current money, or 1000lb. of tobacco, a warrant from a single magistrate must first be issued and returned by the constable "*Non Est*"—an attachment may then be issued against the "goods, chattels and credits" only; and not against the lands, tenements, &c. 1791, *c.* 68, *s.* 1.

The oath or affirmation of any creditor, made before a judge of any other of the United States, shall not be good and sufficient evidence, unless there be thereto annexed a certificate of the clerk of the court of which he is a judge, or certificate of the governor, chief magistrate, or notary public, of such state, that the said judge hath authority to administer such oath or affirmation. 1795, *c.* 56, *s.* 2.

Upon the issuing of every attachment, there shall be therewith issued a writ of *capias ad respondendum* against the defendant; and a declaration or short note, expressing the plaintiff's cause of action, shall moreover be filed, and a copy thereof shall be sent with the writ, to be set up at the court-house door by the sheriff. 1795, *c.* 56, *s.* 3.

Form of a writ of *Capias ad Respondendum* from a County Court.

——— County, To Wit:

The State of Maryland to the Sheriff of —— County, greeting.

We command you, that you take (*A. B.*) if (*he*) shall be found in your bailiwick, and (*him*) safe keep, so that you

have (*his*) bod(*y*) before the justices of the next county court, to be held at the court-house in (————) in and for said county, on the (*first*) Monday of (*August*) next, to answer unto (*C. D.*) &c.

Hereof fail not at your peril; and have you then there this writ. Witness (*W. C.*) esquire, chief justice of the said court, the (*sixth*) day of (*February*) in the year of our Lord (1804.) Issued the [*seventh*] day of [*March*, 1804.]

To every attachment issued in pursuance of the act of 1795, c. 56, the garnishee may plead in behalf of the defendant such plea or pleas as the said defendant might or could do if he had been taken by the sheriff under the writ of *capias ad respondendum*, and had accordingly appeared to the same. 1795, *c.* 56, *s.* 4.

In all cases of attachments, it shall and may be lawful for the plaintiff to exhibit interrogatories, in writing, to the garnishee, who shall, by rule of court, answer each and every of the interrogatories aforesaid, touching or concerning the property of the defendant in his possession or charge, or by him due or owing, at the time of serving of such writ of attachment, or at any other time, and if such garnishee shall refuse or neglect so to do, the court are directed to adjudge that such garnishee hath in his possession property of the defendant, or is indebted to such defendant, to an amount and value sufficient to pay the debt, damages, and interest, of said plaintiff, and costs, and execution shall issue as in other cases of condemnation in the hands of garnishees. 1795, *c.* 56, *s.* 5.

If any plaintiff, in any writ of attachment, or any person for him, shall make oath or affirmation, that he verily believes that the person against whom such writ of attachment shall be directed to be served as garnishee hath property belonging to the defendant in his hands and possession, or under his care, or is indebted to the defendant in any sum of money, although the same shall not then be due, and that he verily believes that he has just cause to fear that such person is about to depart and remove from the county where he resides, it shall be lawful for the clerk of the court where such writ of attachment issues, on the affidavit being filed, to cause to be inserted in the body of such attachment a clause of *capias ad respondendum* against such person as garnishee, pursuant to the nature of the plaintiff's claim, and he shall be held to sufficient bail to appear at court, and to make answers as directed by law, and further to render his body to prison, or pay the condemnation money, if judgement shall pass against him. 1795, *c.* 56, *s.* 6.

After hearing allegations from both parties to an action, as well the plaintiff as defendant, the justice proceeds to give judgement. Sometimes great difficulties occur, when the point in dispute is very intricate. The law permits as well the defendant as the plaintiff to establish any claim upon oath; and hence we sometimes find, to the very great scandal of truth and justice, persons testifying to the truth of accounts which directly contradict one another. As, for instance, where a person declares upon oath that his account is just and true, and the opposite party declares likewise upon oath that he paid so much money on the same account. However, the justice is obliged to determine according to evidence, and the equity and right of the matter, and to give judgement accordingly, as is prescribed by the act of 1791, *c.* 68, *s.* 1.

The judgement is generally entered at the bottom of the warrant, or on the back thereof, in the following forms, as the case may require.

Form of a Judgement on Confession.

(A. B.) vs. *(C. D.)* } *(June 19th, 1804.)* Judgement confessed by the defendant in favor of the plaintiff, for *(five pounds)* current money debt *(or damages, as the case may be)* and four shillings and ten-pence costs.

Witness my hand. J. S.

Form of a Judgement in favor of Plaintiff, on trial.

(A. B.) vs. *(C. D.)* } *(June 19th, 1804.)* Judgement in favor of the plaintiff for *(five pounds)* current money debt *(or damages, as the case may be)* and four shillings and ten-pence costs.

Witness my hand. J. S.

Form of a Judgement in favor of the Defendant, on trial.

(A. B.) vs. *(C. D.)* } *(June 19th, 1804.)* Judgement that the plaintiff pay the defendant's costs, to wit: four shillings and ten-pence.

Witness my hand. J. S.

In a *non pros.* or failure of the plaintiff to establish his claim, on which this last form of a judgement is predicated, costs are awarded to the defendant, and judgement *only* for such costs as he has been put too.

In case judgement is had for the plaintiff, and a commitment is prayed by him, the justice is to issue one in the following manner:

Form of a Mittimus.

STATE OF MARYLAND, ——— COUNTY, TO WIT:

You are hereby commanded to receive into your gaol and custody *(A. B.)* and him safe keep until he shall satisfy *(C. D.)* the *(above, or within judgement; or, if the mittimus is not written on the judgement specify the sum)* and the additional costs thereon. Hereof fail not, and him safe keep until he shall be thence delivered agreeably to law. Witness my hand and seal this *(19th)* day of *(June*, 1804.)

J. S. Seal.

To the Sheriff of said county.

It shall and may be lawful for any constable of the county, properly qualified, to deliver at the county gaol, to the sheriff or gaoler of the said county, any person committed by a single magistrate on a *capias ad satisfaciendum*, when the case may or doth so require; and the said sheriff, or his gaoler, are required and directed to take charge of such person, and the same in his custody safe keep, until such person or persons shall be duly discharged according to law. 1801, *c.* 62, *s.* 5.

The following probats would properly claim a place amongst those at the commencement of this chapter; but having been omitted in that place, we have subjoined them here, together with an abstract of the law upon which the two first are founded, to wit:

If a claim against the estate of a deceased person arises on a bond, note, or bill of exchange, or account for dealing with a factor, and the principal be not within the state, the factor who took the said bond, or note, or bill, or who sold or delivered the articles in the account, may make oath or affirmation, to be certified as already described in the foregoing part of this chapter, and endorsed on a statement of the money thereon due, "that the said statement is full, just and true, and that he (the deponent) took the said bond, (or note, or bill, or delivered the articles charged in the account) as factor to —— ——, living in (or lately of)

——; that neither he, (the deponent) nor the principal, nor any other person for him, or the principal to his or her knowledge or belief, hath received any part of the money originally due on such bond, note, bill, or account, or any security or satisfaction for the same, except what (if any) is credited;" and the said oath or affirmation, with the other requisite vouchers, as already specified, shall authorise the executor or administrator, in making payment or distribution. 1798, No. 101, c. 9, s. 10.

Form of a Probat of a claim againſt the eſtate of a deceaſed perſon, ariſing on a bond, note, or bill of exchange, or account for dealing with a factor, where the principal reſides out of the ſtate.

——— County, To Wit:

On the *(fifteenth)* day of *(June, 1804)* being since the death of *(A. B.)* before me the subscriber one of the Justices of the Peace in and for said county, appears *(C. D.)* and makes oath on the holy Evangely of Almighty God, that the above *(or within, or annexed)* statement is full, just and true, and that he delivered the articles* charged in the account as factor to *(E. F.)* living in *(Philadelphia)* or lately of *(Baltimore;)* that neither he, nor *(E. F.)* nor any other person for him or *(E. F.)* to his knowledge or belief hath received any part of the money originally due on said account, or any security or satisfaction for the same, except what *(if any)* is credited.

Witness my hand. J. S.

* If the claim be for a bond, note, or bill of exchange, the statement must be predicated on such instrument, and instead of saying "*delivered the articles*," &c. state as follows, to wit: and that he took the bond, (*or note, or bill*) as factor to (*E. F.*) living in (*Philadelphia*) or lately of (*Baltimore*) that neither he nor (*E. F.*) nor any other person for him or (*E. F.*) to his knowledge or belief hath received any part of the money originally due on said bond (*or note, or bill*) or any security or satisfaction for the same, except what (*if any*) is credited.

If the factor be dead, or out of the state, and the principal be also out of the state, and it shall appear (*in case of account*) that the same has been regularly proved according

to the act of 1785, c. 46, an oath (*or affirmation*) of any other factor, made after the death of the testator or intestate, and certified and endorsed on the statement, "that the said bond, note, bill, or account, came into his hands as factor for the creditor, residing in ——, after the death (*or removal*) of —— ——, the factor who took the said bond, (*or note, or bill, or delivered the articles in the account;*) that he hath reason to believe, and does believe, that the said statement is full, just, and true, and that no part of the money originally due on such bond, (*note, bill, or account*) or any security or satisfaction for the same hath been received, except what (*if any*) is credited." 1798, No. 101, *c.* 9, *s.* 11.

Form of a Probat of a claim againſt the eſtate of a deceaſed perſon, on note, bond, bill of exchange, or account, where the factor is dead, or out of the ſtate; and the principal is out of the ſtate alſo.

—— County, To Wit:

On the (*fifteenth*) day of (*June*, 1804) being since the death of (*A. B.*) appears (*C. D.*) and makes oath on the Holy Evangely of Almighty God, that the above (*annexed, or foregoing*) statement came into his hands as factor for (*G. H.*) residing in (*the city of Philadelphia*) after the death (*or removal*) of (*E. F.*) the factor, who delivered the articles* charged in said account; that he hath reason to believe, and does believe, that the said statement is full, just, and true, and that no part of the money originally due on said account, or any security or satisfaction for the same hath been received, except what (*if any*) is credited.

Witness my hand. J. S.

* *If the claim be for a bond, note, or bill of exchange, the form must vary as already specified.*

Form of a Probat of a Book of Accounts.

—— County, To Wit:

On this (*fifteenth*) day of (*June*) in the year (1804) personally appears (*A. B.*) before the subscriber, a justice of the peace in and for said county, and makes oath on the Holy

Evangely of Almighty God, that the several accounts within this book, from folio one to folio [100] inclusive, beginning with the date of the [*seventh*] day of [*January*] in the year [1804] and ending this day, are just and true as they stand stated, and that he hath not, nor any person for him, received any part, parcel, security, or other satisfaction for the same, more than the several and respective credits therein given, to the best of his knowledge and belief.

Sworn before J. S.

Form of a Probat of a Book of Accounts made by a Merchant's Clerk, and which may be added to the foregoing.

And now also personally appears (*C. D. clerk and storekeeper, or whatever else he may properly be called*) for the said [*A. B.*] and being sworn on the Holy Evangely of Almighty God, deposes and says, that the goods, wares and merchandizes, charged in the several accounts in this book, from folio one to folio [100] inclusive, beginning with the date of the [*seventh*] day of [*January*] in the year [1804,] and ending this day, were sold and delivered as charged, and at the prices therein charged, and that the money therein respectively charged to be delivered and paid, was delivered and paid as charged, and that he, this deponent, hath not, nor hath the said (*A. B.*) nor any person for him, received any part, parcel, security, or other satisfaction for the same, more than the several and respective credits therein given, to the best of his knowledge and belief.

Sworn before J. S.

Form of a Probat to an open account, made by a disinterested credible witness, proving payment of money, delivery, &c. in any state or foreign country, according to the act of 1785, *c.* 46, *s.* 4.

——— County, To Wit:

On this (*fifteenth*) day of [*January*] in the year of our Lord [1804] personally appears [*A. B.*] of [*Baltimore county*]

before me the subscriber, one of the Justices of the Peace in and for said county, and makes oath on the holy Evangely of Almighty God, that he was present at [——] and saw [*C. D.*] pay [*or deliver*] to [*E. F.*] the sum of money charged in the within account [*or that the several goods, wares, merchandise, chattels, or effects, charged in the within account, were delivered as charged, and that the money therein charged to be delivered and paid, was delivered and paid as charged*] to the best of his knowledge and belief.

Sworn before J. S.

Form of a Probat of an open account, made by a clerk, ſtore-keeper, &c. of money paid, or goods, &c. ſold within the ſtate, to be made within twelve months from the date of the articles reſpectively ſold or delivered, agreeably to the act of 1785, *c.* 46, *s.* 5.

—— County, To Wit:

On this [*fifteenth*] day of [*June*] in the year of our Lord [1804] personally appears [*A. B. clerk and store-keeper*] to [*C. D.*] of [*Baltimore*] before me the subscriber, a Justice of the Peace in and for said county, and makes oath on the holy Evangely of Almighty God, that the goods, wares and merchandise, charged in the within account, were sold and delivered as charged, and at the prices therein charged, and that the money therein charged to be delivered and paid was delivered and paid as charged, to the best of his knowledge and belief.

Sworn before J. S.

It will be seen by referring to the 11th page of this book, that the plaintiff shall, at or before the first imparlance court make oath to the truth of his claim; but if he makes the oath at the same time that the clerk does, the following may be added to the above:—

And now here at the same time personally appears (*C. D.*) before me the subscriber, a Justice of the Peace in and for the county aforesaid, and makes oath on the holy Evangely of Almighty God, that he believes the money (*goods, or whatever it may be*) charged in the said annexed account, were *bona fide* delivered as charged, and that he hath not,

nor any person for him, to his knowledge or belief, received any payment or satisfaction for the said articles charged *(more than credit is duly given for in and appearing upon the said account)* nor hath he received any security or satisfaction for the same, and that the balance charged and claimed is justly due, according to the best of his knowledge and belief.

Sworn before J. S.

Form of a Certificate from a Judge, &c. that the books from which an account is taken have been legally proved.

——— County, To Wit:

I have this (*fifteenth*) day of [*June*, 1804] compared the within account and probate with the books of accounts of the within mentioned (*A. B.*) and I hereby certify that the said accounts and probats are truly copied from the said books of accounts of the said (*A. B.*) and that the said books appear to be regularly proved within the time and agreeably to the manner directed by law; and the said (*A. B.*) now here makes oath on the holy Evangely of Almighty God, before me the subscriber, a Justice (&c.) that the said within account is just and true as stated, and that he hath not, nor any person for him, received any part, parcel, security, or other satisfaction, for the same, more than the several and respective credits therein given.

Or it may run thus agreeably to the act of 1785, *c.* 46, *s.* 5.

That he believes the money, goods, wares, merchandises, effects or chattels [*as the case may be*] charged in the said account, were *bona fide* delivered as charged, and that he hath not, nor any person for him, to his knowledge or belief, received any payment or satisfaction for the articles charged, more than credit duly given for in and appearing upon said account, nor hath he received any security for the same, and that the balance charged and claimed is justly due according to the best of his knowledge and belief.

Sworn before J. S.

It shall not be lawful for any person whatsoever to cause any inhabitant of this state to be arrested out of the county where he or she doth reside, by virtue of any *capias ad respondendum*, or *capias ad satisfaciendum*, for any debt, damage, or cost, until the sheriff or coroner of the county where such defendant shall reside shall have returned a *non*

est inventus on a *capias ad respondendum*, or *capias ad satisfaciendum*, issued at the request of the said person against the defendant. 1801, *c.* 74, *s.* 11.

No person under the age of twenty-one years can be compelled to pay any debt by him contracted, except it be for sufficient meat, drink, clothing, washing, lodging, teaching, or other necessaries. *See Blackstone's Commentaries, vol.* 1, *p.* 493.

ACCUSATION.

In criminal prosecutions every man hath a right to be informed of the accusation against him. *Declaration of Rights, art.* 19.

ACKNOWLEDGEMENT.

If any man shall have one or more children by any woman whom he shall afterwards marry, such child or children, if acknowledged by the man, shall, in virtue of such marriage and acknowledgement, be legitimated, and capable in law to inherit and transmit inheritance as if born in wedlock. 1786, *c.* 45, *s.* 7. *For Acknowledgement of Deeds*, &c. *see Conveyancing*, &c.

ADMINISTRATION.

The following rules, orders, and regulations, shall be taken, held, and considered, in all courts, tribunals, and offices, and by all judges, justices, and officers in this state, to be the law of the land. 1798, No. 101, *a.* 3.

All lands, tenements, and heriditaments, which might pass by deed, or which would, in case of the proprietor's dying intestate, descend to, or devolve on, his or her heirs or other representatives, except estates tail, shall be subject to

be disposed of, transferred and passed, by any will, testament or codicil, under the following restrictions. 1798, No. 101, *c.* 1, *s.* 1.

No will, testament, or codicil, shall be effectual to create any interest or perpetuity, or make any limitation, or appoint any uses, not now permitted by the constitution or laws of the state. *ibid. s.* 2.

For a will, &c. to be valid, the person making it must be of sound and disposing mind, and capable of executing a valid deed or contract. For a will, &c. to be good and effectual to pass any interest or estate in any land, tenement, or incorporeal hereditament, the person making the same must be, if a male, full twenty-one years of age; and, if a female, full eighteen years of age. *ibid. s.* 3.

Devises and bequests of lands and tenements, which are devisable by law, must be in writing, and signed by the devising party, or some other person in his presence, and by his express directions; and must be attested and subscribed, in the presence of the said devisor, by three or four credible witnesses, or else such devises are of no effect: And no written devise of lands, tenements, or hereditaments, nor any clause thereof, can be revoked, except the party who made the devise shall revoke it by some other will, codicil, or other writing, declaring such revocation; or by the testator's burning, tearing, cancelling or obliterating the same; or except it be so destroyed in his presence and by his directions and consent. Or a devise may be revoked or altered by the testator's making some other will or codicil in writing, or by other writing of the devisor, signed in the presence of three or four witnesses, declaring the same. *ibid. s.* 4.

Any person to whom a will or codicil is committed for safe-keeping by the party making it, who shall alter or destroy the same without the direction of the party who made it or wilfully secrete it for six months after the death of the party is known to him or her, such person, on conviction, shall receive such punishment as is inflicted by law in cases of grand larceny. 1798, No. 101, *c.* 2, *s.* 1.

Any private person, who may have possession of a will or codicil after the death of the testator or testatrix, may open and read it in the presence of the deceased's near relatives, who may conveniently have notice thereof, and of other persons; and may immediately thereafter deliver it to the register of wills of the county where he resides, which register shall keep the same safe, until it is proved,

or until it is demanded by an executor, or other person authorised to demand it, for the purpose of having it proved according to law. *ibid. s.* 2.

If such private person neglect to deliver a will or codicil to the register, for three calendar months after the death of the testator or testatrix is known to him or her, on conviction, they are subject to such fine as the court in their discretion think proper. *ibid. s.* 3.

Wills, &c. containing bequests of goods, chattels, or personal estate, may be proved in the county where most of the witnesses reside, or in the county where letters testamentary or of administration may be granted. *ibid. s.* 5.

In the recess of the court, when any will or codicil, making any disposition relative to goods, chattels, or personal property or rights, or appointing an executor, is exhibited to the register of wills for proof, the register shall proceed to take the probat and grant letters testamentary accordingly, provided any of the next relations of the deceased attend, and make no objections or enter no caveat, or provided it shall appear that such relations had proper notice to attend. *ibid. s.* 6.

If any will or codicil be, in like manner exhibited to the orphans' court, said court may forthwith proceed to take the probat thereof, provided no objections be made or caveat entered as aforesaid. *ibid. s.* 7.

If any such will or codicil is exhibited to the orphans' court, and none of the near relations of the deceased attend, and it shall appear that no notice had been given them, the court may direct some one or more of such relations to be summoned to appear on a fixed day, to shew cause wherefore the will or codicil should not be proved; or the court may direct such notice to be given in the public papers, or otherwise as they may think proper; and if there be no caveat or objections made on or before the day fixed, the court, or the register of wills may proceed to take the probat of such will, &c. but if objection be made, the court shall have cognizance of the affair, and proceed to try the same, and determine according to the testimony produced on both sides. *ibid. s.* 9.

If probat of a will, &c. as aforesaid, shall have been taken by a register, and any person thereafter shall enter a caveat, the court must decide upon such caveat before granting letters testamentary. *ibid. s.* 10.

If an orphans' court shall determine against a will or codicil as aforesaid, when it has been exhibited for probat, it shall not be received for probat in any other county; pro-

vided nevertheless, that either party conceiving him or herself aggrieved by the decision of the court relative to the probat, may, within three days after such decision, enter an appeal to the court of chancery, or general court of the shore whereon such court is held; and such appeal shall stay further proceedings of the orphans' court, provided an attested copy of the whole proceedings, under the seal of the office, be filed in the chancery court, or general court, within 60 days thereafter; and the decree of the chancery court, or general court, to be given on the transcript only, shall be final and conclusive; and the orphans' court shall proceed according to the said decree, an attested copy whereof shall be transmitted, under seal, to the orphans' court. *ibid. s.* 11.

When no objection is made to the protest of a will or codicil as aforesaid, and no caveat filed against it before probat, it is not necessary to examine witnesses, unless they voluntarily attend, but the probat may be made on such proof as is necessary to give efficacy to a will or codicil for passing personal property; provided that every executor, or other person, exhibiting a will, shall be examined on oath, or affirmation, as the case may be, whether or not he or she knows of any other will or codicil, and in what manner the will or codicil exhibited came to his or her hands. *ibid. s.* 12.

After probat of a will or codicil has been taken, before letters testamentary or of administration with a copy of the will shall be actually granted, any person may file a petition to the court praying for another examination of the case, and the court shall delay granting letters until the petition is decided upon; and if a petition shall be filed after letters are granted, and the court, on hearing both sides, shall decide against the probat, the letters aforesaid shall be revoked, and the power of the party under said letters shall cease; and the said will cannot be proved in any other county, unless the decision be reversed by the court of chancery or general court; and no noncupative will shall be proved within fourteen days after the death of the testator, unless his widow (if any) and some one of the next of kin, have been summoned to contest the same if they please. *ibid. s.* 13.

When any will or codicil, as aforesaid, has been properly authenticated, letters testamentary may issue to the executor, executrix or executors, named in the said will or codicil; provided they give bond to the state of Maryland, with two good sureties, to be approved by the register or the

orphans' court, in such penalty as the said register or court may require, conditioned for the faithful performance of the trust reposed, to be lodged and recorded in the register's office, and subject to be put in suit according to law. 1798, No. 101, *c.* 3, *s.* 1.

Where there is personal property of the testator in another county than that where the will was proved, any of the executors or executrix named in a will, may procure an attested copy of such will and of the probat, under the seal of the office where it was authenticated or proved, and on producing it to the orphans' court in any other county as aforesaid, the said will, and the authentication of the probat thereof shall be there recorded; and letters testamentary may be granted by such court or the register thereof in its recess, at any time within forty days from the date of the aforesaid copy, on executing bond or bonds to the state of Maryland, for the faithful performance of the trust; and in case of sickness, accident, or reasonable excuse made in behalf of the executors or executrix, the court or register in its recess, may grant a further time, not exceeding thirty days, for filing such bond, and taking such letters; but in no case must letters testamentary be granted in such county after the expiration of such time allowed, or in any other county except that wherein the will was authenticated or proved; and it is the duty of such executor or executrix to transmit to the court where the will was authenticated or proved, a certificate under seal of the register of wills of the county wherein letters testamentary shall have been granted, to shew that such letters have been granted. *ibid. s.* 2.

If there be only one executor or executrix named, and he or she shall have been present at the authentication or probat of the will and shall not, within thirty days thereafter, file a bond as aforesaid, or procure an attested copy under seal as aforesaid, for the purpose of taking letters as aforesaid in another county, letters of administration, with a copy of the will annexed, may be granted by the orphans' court of the county wherein was the probat or authentication, to such person as they might be granted to in case of intestacy; and if the said executor or executrix, so procuring an attested copy, shall not obtain letters testamentary in some other county, within seventy days from the date of the copy, letters of administration may be granted as aforesaid, by the orphans' court of the county where the will was approved or authenticated; and it shall be incumbent on the party applying for or taking such letters of administration, to shew that letters testamentary have not been obtain-

ed in some other county on the copy aforesaid; but such letters of administration shall not be granted, if it shall be proved to the court by affidavit, or certificate under the seal of office, or if they shall have reason to believe that such letters testamentary have been granted in a county proper for granting them. *ibid. s.* 3.

In case the said sole executor or executrix shall not have been present at the authentication or probat, but shall have been within the state, a summons may issue against him or her, either at the instance of a person interested, or *ex officio* by the orphans' court, or, in their recess, the register of wills of the county wherein the will was authenticated, or proved, returnable not less than twenty, nor more than sixty days after date; and if the summons shall be returned "*summoned*," and the executor or executrix shall not appear accordingly, or appearing shall not, within twenty days thereafter, file a bond or bonds as aforesaid, or if two such summonses shall be returned "*non est*," and the party shall not appear according to the tenor of the second summons, or appearing shall not, within twenty days thereafter, file a bond as aforesaid, letters of administration may be granted as aforesaid; provided nevertheless, that in case of sickness of, or accident to, such executor or executrix, on reasonable excuse made in his or her behalf, the court may at discretion, allow a further time, not exceeding forty days, after such return or appearance, for filing such bond. *ibid. s.* 4.

If the said sole executor or executrix be out of the state, at the time of authentication or probat, and shall not, within six months thereafter, return and file a bond as aforesaid, letters of administration may be granted as aforesaid; but in case the said executor be out of the state as aforesaid, and shall return at any time before the expiration of the said six months, in order to expedite the granting of letters, there may be a summons, and the same proceedings thereon, as if he or she had been in the state at the time of authentication and probat, and upon the said proceedings letters of administration may be granted before the expiration of six months; but it shall not be held necessary to proceed by summons as aforesaid, in case the party be as aforesaid out of the state at the time of authentication or probat, and shall return as aforesaid; but letters of administration, after the expiration of the said six months, may be granted, without such proceedings by summons against the executor or executrix so returning. *ibid. s.* 5.

In no case, where there are several executors named in a will, shall letters testamentary be granted to one only, or to any number of them less than the whole, or shall letters of administration be granted until there shall be such proceedings against each of them failing, as would authorise the issuing letters of administration in case of the failure of a sole named executor. *ibid. s.* 6.

Executors named in a will filing, in the orphans' court of the county where the will has been proved, a renunciation in writing of the trust, letters testamentary may be granted as if such executors had not been named in the will; but notwithstanding such renunciation, if they file bond before letters are actually granted to another, they shall be entitled to have letters testamentary granted to them or to be included therein. *ibid. s.* 7.

In case letters testamentary shall be granted to one or more executors named in a will, where the rest fail, those who are not named in the letters shall have no concern with the administration, and shall have no more interference or interest in the estate than if they had not been named in the will. And if letters of administration, with a copy of the will, be granted, executors as aforesaid shall not have any concern therein; neither shall any executor or executrix named in a will, have power to dispose of or interfere with the property of the deceased, before letters testamentary are granted, further than is necessary to preserve the same. But any act by any executor or executrix named in a will, done before obtaining letters testamentary, shall, in case he or she shall afterwards obtain such letters, be as valid and effectual as if the said act had been done after obtaining such letters. *ibid, s.* 8.

Any bond given by executors or administrators, must be recorded in the office of the register of wills; and any person conceiving him or herself interested in the administration, shall be entitled to, and have on demand, a copy of such bond, and a certificate under the hand and seal of office of the register; upon which copy and certificate an action may be maintained in the name of the state, for the use of the party interested. *ibid. s.* 10.

Every executor or executrix, administrator or administratrix, after filing his or her bond for faithful performance, and before letters shall be committed to him or her, shall be required to take the following oath or affirmation, as the case may require, to be administered by the register of wills or the orphans' court. *ibid. s.* 12.

You —— —— do swear, (or do solemnly, sincerely and truly affirm and declare) that you will well and truly administer the goods, chattels, personal estate and credits of —— ——, late of —— ——, deceased, to the best of your knowledge, according to law, and will give a just account of your administration when thereto you shall be lawfully called; so help you God.

Form of a Bond to be passed by an executor or executrix, administrator or administratrix, according to the act of 1798, No. 101, *c.* 3, *s.* 11.

Know all men by these presents, that we —— ——, of —— county, are held and firmly bound to the state of Maryland, in the sum of —— current money, to be paid to the state aforesaid, or to its certain attorney; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents; sealed with our seals. Dated the —— day of ——, in the year of our Lord ——.

The condition of the above obligation is such, that if the above bounden —— —— shall well and truly perform the office of executor *(or executrix, administrator or administratrix, as the case may be)* of —— ——, late of ——, deceased, according to law, and shall, in all respects, discharge the duties of him *(or her)* required by law, as executor *(or executrix, administrator or administratrix, as the case may be)* aforesaid, without any injury or damage to any person interested in the faithful performance of the said office, then the above obligation shall be void; it is otherwise to be in full force and virtue in law.

Signed, sealed, and delivered in the presence of —— ——. } *(A. B.)* Seal. *(C. D.)* Seal. *(E. F.)* Seal.

Form of Letters Testamentary to be granted to an executor, executrix, or executors, under the seal of the Orphans' Court.

MARYLAND, TO WIT:

The State of Maryland, To all to whom these presents shall come, Greeting:

Know ye, that the last will and testament of —— ——,

of ——, deceased, hath in due form of law, been exhibited, proved and recorded, in the office of the register of wills for —— county, a copy of which is to these presents annexed; and administration of all the goods, chattels and credits of the deceased, is hereby granted and committed unto —— ——, the executor *(executrix or executors, or one or more of the executors, as the case may be)* by the said will appointed. Witness (J. S.) chief justice of the Orphans' Court of —— county, this —— day of ——. Test. (G. M.) register of wills for —— county.

In case of delay, on account of the absence from the state of an executor, executrix or executors, named in a will, or of a contest relative to the right of administration, or of a contested will or codicil, or of the negligence of any executor or executrix, named in the will, to take out letters testamentary, or the absence or negligence of any person entitled to letters of administration, or on any other account, the orphans' court of the county wherein the will was proved or authenticated, or where letters of administration ought to be granted, may, at discretion, issue letters, authorising the collection and preservation of the goods of the deceased, and the returning an inventory thereof; and the said letters may, at discretion of the court, be directed to one person only, or to several persons, in case the goods or chattels, and personal estate of the deceased shall be supposed to be in different counties. *ibid. s.* 14.

Form of Letters authorising the collection and preservation of the goods of a deceased person, and the returning an inventory thereof.

MARYLAND, TO WIT:

The State of Maryland, to all persons to whom these persons shall come, Greeting:

Know ye, that whereas —— ——, of ——, deceased, as it is said, had, at his *(or her)* decease, personal property within this state, the administration whereof cannot immediately be granted, but which, if speedy care be not taken, may be lost, destroyed, or diminished; to the end, therefore, that the same may be preserved for those who shall appear to have a legal right or interest therein,

we do hereby request and authorise —— ——, of ——, to secure and collect the said property, wheresoever the same be in this state, *(or, in —— county, or counties)* whether it be goods, chattels, debts or credits, and to make or cause to be made a true and perfect inventory thereof, and to exhibit the same with all convenient speed, together with a reasonable account of his collection, into the office of the register of wills for —— county. Witness (J. S.) chief justice of the orphans' court for —— county. Test (G. M.) register of wills for —— county. *ibid s.* 15.

But before letters to collect shall be granted, the party shall give bond, with approved security, to be filed, recorded, &c. in such penalty as the court shall direct, and the condition thereof shall be as follows:

Condition of a Bond to be filed by persons appointed to collect and preserve the goods of a deceased person.

KNOW ALL MEN, &c. *(as other bonds.)*

The condition of the above obligation is such, that if the above bounden —— ——, shall well and honestly discharge the office of collector of the goods, chattels, and personal estate and debts of —— ——, deceased in the state of Maryland, *(or —— county)* and shall make or cause to be made, a true and perfect inventory or inventories of such of the said goods, chattels, personal estate and debts, as shall come to his (or her) possession or knowledge, and the same shall in due time return to the register of wills of —— county, and shall also dellver to the (person or persons) who shall be authorised by the orphans' court of the said county to receive them, such of the said goods, chattels, personal estate and debts, as shall come to his (or her) possession (except such as shall be allowed for by the said court) then the above obligation is to be void, or is otherwise to remain in full force and virtue in law. *ibid. s.* 16.

Every such collector shall, on accepting his appointment, take the following oath or affirmation:

You —— ——, do swear *(or affirm, as the case may be)* that you will well and honestly discharge the office of collector of the goods, chattels, personal estate and debts, of —— ——, deceased, according to the tenor of the letters granted to you by the orphans' court of —— county, and

agreeably to the directions of law, to the best of your knowledge: So help you God.

Every collector so appointed, shall have power to collect the goods, chattels, personal estate and debts, according to the tenor of the said letters, and to secure the same at such reasonable and necessary expence as shall be allowed by the court; and the court may authorise him, immediately after appraisement, to sell such as shall be perishable, or not to be preserved, and to account for the same; and for the whole trouble incurred by a collector, the court may allow a commission on the amount of the property and debts actually collected, and afterwards delivered to an executor (or administrator) as to the court shall seem just, not exceeding three *per cent.* or the cour may allow a commission on the whole inventory, not exceeding two *per cent. ibid. s.* 18.

No collector shall have power to bring suit for debts, or to release the same, or to do any further act than is before mentioned. *ibid. s.* 19.

When letters testamentary or of administration are granted, the collector's power ceases; and he must deliver, on demand, the property and money of the deceased in his hands, up to the person obtaining letters, except the amount of pay for his services; and in case the collector evades, refuses, or neglects to deliver up such property, on demand made at a reasonable time and place, either the court may proceed against him by attachment and impose a fine not exceeding ten *per cent.* on the amount of property in his hands; or his bond may be sued by the executor or administrator; unless in the case of the minority of the executor or executrix; then, and in such case, letters of administration, during the minority of such executor or executrix, shall be granted. The age of eighteen years is considered the age of majority in this case. *ibid. s.* 20.

If any person named as executor or executrix in a will, shall not be eighteen years of age at the time when administration ought to be granted, or shall be of unsound mind, incapable of making a legal contract, or convict of infamy, or not a citizen of the United States, letters testamentary; or of administration, may be granted in the same manner as if such person had not been named in the will. 1798. No. 104, *c.* 4, *s.* 1.

The orphans' court cannot decide on the incapacity of a person named in a will as aforesaid, without giving notice to the party to attend; and, if the party attends, hearing what such person may have to advance. *ibid. s.* 2.

A transcript of the record of conviction shall be evidence in the orphans' court to prove the party infamous. *ibid. s.* 3.

If a person named as aforesaid in a will shall be alledged to be an alien, his citizenship cannot be otherwise established than by a certificate under the seal of the office or court where the party became naturalized, or by competent testimony that the person is a natural born citizen of the state or of some of the United States. *ibid. s.* 4.

Any inquisition of a jury, on a writ issued from chancery, finding the party an idiot, lunatic, or *non compos mentis*, and confirmed by the chancellor, shall be conclusive evidence of the unsound mind of the party; and if such an inquisition shall not have been had at the time when administration ought to be granted, a writ *de lunatico inquirendo* may issue by the chancery or orphans' court, on the petition to either of the said courts, of any person interested; and the finding of the jury, that the party is an idiot, a lunatic or madman, or *non compos mentis*, thereon returned and confirmed by the chancellor, or the orphan's court, as the case may be, shall be conclusive against the party; and a certificate from the register in chancery, under seal, stating the substance of the proceedings, shall be evidence in the orphans' court, who may thereon proceed as if the party had not been named in the will. *ibid. s.* 5.

When it is alleged that a person is under the age of eighteen, the person making the allegation is bound to prove it. *ibid. s.* 6.

When letters testamentary are granted to an executor above eighteen and under twenty-one years of age, his bond shall be as binding as if he were of full age, *ibid. s.* 7. And so in like manner with an executrix. *ibid. s.* 8.

If a married woman obtains letters testamentary, her husband must enter bond and two sureties for her faithful performance, otherwise she cannot act, although named in a will. *ibid. s.* 8.

No letters of administration shall be granted to a person *non compos mentis*, to an idiot, lunatic, or person infamous as aforesaid. 1798, No. 101, *c.* 5, *s.* 1.

When a person dies intestate, leaving in this state goods, chattels, or personal estate, letters of administration shall be granted by the orphans' court of the county where his mansion house or residence was; if he had no mansion house or residence in the state, letters shall be granted in the county where the party died; and in case he neither had mansion house, residence, nor died in the state, then letters shall be granted in the county wherein lies or is sup-

posed to lie a considerable part of the party's personal estate. *ibid. s.* 2.

Persons applying for letters in such case, must prove the dying of the party intestate, unless the same be notorious; and the court may examine such person touching the circumstances of the death; and if the dying intestate is not proved to the satisfaction of the court, no letters shall be granted. At least twenty days must expire after the death of the intestate, and at least seven days after application for letters, before they can be granted. *ibid. s.* 3.

If letters in such case are granted, and a will for the disposing of the personal estate of the deceased, shall be afterwards proved according to law, and the persons named therein shall, within thirty days thereafter apply for letters testamentary, and shall execute a bond of surety, letters testamentary shall be granted, which shall be construed as a revocation of the letters of administration; but all acts done by the administrator before letters testamentary were granted, shall be binding on the executors; and the executors shall in every respect stand in the place of the administrators. *ibid. s.* 4.

And where letters testamentary shall be so granted, the administrators must settle up their accounts with the orphans' court, and deliver to the executors all the goods, chattels, and personal property of the deceased, in their possession, on failure to do which their bonds are liable to be put in suit by the executors. *ibid. s.* 5.

In case an executor, executrix, administrator or administratrix, shall die before the estate shall be fully administered, letters of administration *de bonis non* shall be granted to the person entitled agreeably to the rules herein before laid down, and the proceedings shall in all respects be the same as if administration had been originally granted; and in no case shall the executor of an executor be entitled, as executor, to administration *de bonis non* of the first deceased; and the letters, bond and oath, of an administrator *de bonis non*, shall be in the form herein before directed, except that the words "not already administered," shall be added in the proper places. *ibid. s.* 6.

The qualifications of an administrator or administratrix shall, in all respects, be the same as those of an executor; and the proceedings to exclude such as *prima facie* appear entitled to the administration of the estate of an intestate shall in all respects be the same as herein before directed for excluding any person named in a will as executor or executrix; provided that it shall not be necessary so to proceed, in case the party be out of the state, or in case of ad-

ministration to be granted to any, except relations or collateral relations, more remote than brothers or sisters of the intestate; and no relation, except a widow, child, grand child, father brother, sister, or mother, shall be entitled, unless he or she shall apply for the same. *ibid. s.* 7.

If the intestate be a married woman, it shall not be necessary for her husband to take out letters of administration, but all her choses in action shall devolve upon the husband, in the same manner as if he had taken out such letters; provided, that if he shall not, in his life-time, reduce the said choses in action into possession, or obtain judgement thereon, the said choses in action shall devolve on her representative, and administration may be granted accordingly. *ibid. s.* 8.

A husband, bringing a personal action to recover in right of his wife, either before or after her death, may declare specially, setting forth in the usual manner, how the debt or right accrued to his wife, and stating further that by marriage the debt or right hath on him devolved. *ibid. s.* 9.

If the intestate leave a widow, and a child, or children, administration, at discretion of the court, shall be granted to the widow or child, or one of the children. *ibid s.* 10.

If there be a widow and no child, the widow shall be preferred, and next to the widow or children, a grand-child shall be preferred. *ibid. s.* 11.

If there be neither widow, nor child, nor grand-child, the father shall be preferred. *ibid. s.* 12.

If there be neither widow, nor child, nor grand-child, nor father, brothers and sisters shall be preferred; and next to brothers and sisters, the mother shall be preferred. *ibid. s.* 13.

If there be neither widow, nor child, nor grand-child, nor father, nor brother, nor sister, nor mother, the next of kin shall be preferred. *ibid. s.* 14.

Males shall be preferred to females, in equal degree of kin. *ibid. s.* 15.

Relations of the whole blood shall be preferred to those of the half blood in an equal degree, and relations of the half blood shall be preferred to relations of the whole blood in a remoter degree. *ibid. s.* 16.

Relations descending shall be preferred to relations ascending in the collateral line; that is to say (for example) a nephew shall be preferred to an uncle. *ibid. s.* 17.

None shall be preferred in the ascending line beyond a father or mother, or in the descending line below a grand-child. *ibid. s.* 18.

A female sole shall be preferred to a married woman in equal degree. *ibid. s.* 19.

Where a female is entitled, administration may be granted to her and her husband, provided he be capable. *ibid. s.* 20.

Relations on the side of the father shall be preferred to relations on the side of the mother in equal degree. *ibid. s.* 21.

If there be no relations, administration shall be granted to the largest creditor applying for the same. *ibid. s.* 22.

If there shall be neither husband nor wife, nor child, nor grand-child, nor father nor brother, nor sister, nor mother, or if these be incapable or decline, or refuse to appear on proper summons or notice, or if other relations or creditors shall neglect to apply, administrations may be granted, at discretion of the court. *ibid. s.* 23.

If letters of administration are to be granted, with a copy of the will annexed, and there be a residuary legatee or legatees in such will, he, she, or they, shall be preferred to all, except a widow; and it shall be incumbent on the court to proceed, in the manner herein before directed, with respect to executors within the state, before administration shall be granted to any other person; and a male residuary legatee shall be preferred to a female. *ibid. s.* 24.

Administration may be granted to two or more persons, with the consent of the person first entitled, provided that administration in all cases, shall extend to all the personal property of the deceased within the state. *ibid. s.* 25.

In every case wherein letters testamentary, or of administration, or of collection, are granted, in order that all persons interested in the personal estate may have an opportunity of knowing, as nearly as may be, the amount of the same, an inventory, in case the estate lies in one county, or can conveniently be collected together, or inventories, in case the property lies in more than one county, or cannot conveniently be collected together, shall be returned to the office granting the administration. 1798, No. 101, *c.* 6, *s.* 1.

On granting any letters testamentary, or of administration, or of collection, a warrant or warrants shall issue, under the seal of office, authorising two persons of discretion, not related to the deceased, nor interested in the adminstration, to appraise the goods, chattels, and personal estate, of the deceased, known to them, or to be shewn by the executor, administrator or collector. *ibid. s.* 2.

Form of a Warrant authorising two persons of discretion to appraise, &c.

THE STATE OF MARYLAND, To —— AND ——, GREETING,

This is to authorise you jointly to appraise the goods, chattels, and personal estate of ——, late of ——, deceased, so far as they shall come to your sight and knowledge, each of you having first taken the oath or affirmation hereto annexed, a certificate whereof you are to return, annexed to an inventory of the said goods, chattels, and personal estate, by you appraised in dollars and cents; and in the said inventory you are to set down, in a column or columns opposite to each article, the value thereof. Witness (J. S.) chief justice *(or judge)* of the orphans' court in —— county.

Test, (G. M.) Register, *(&c.)*

Form of the Oath.

You —— —— do swear, (or solemnly, sincerely, and truly affirm) that you will well and truly, without partiality or prejudice, value and appraise the goods, chattels, and personal estate of —— ——, deceased, so far as the same shall come to your sight and knowledge, and will, in all respects perform your duty as appraiser, to the best of your skill and judgement. So help you God.

If any appraiser dies, refuses, or neglects to act, another warrant may forthwith issue in its stead. *ibid. s. 3.*

The appraisers shall proceed as conveniently as may be, to the discharge of their duty, and shall set down each article, with the value thereof, in dollars and cents; all the valuations on one side of the paper shall be set down in one column, distinctly, in figures, opposite to their respective articles; the contents of each column shall be cast up and set down, and the contents of the whole in the last column. *ibid. s. 5.*

When the inventory shall be finished a certificate of their having taken the oath or affirmation as aforesaid shall be thereto annexed; and every inventory shall be returned to the proper office within three calendar months from the date of the letters, or within such time from the date of the warrant, in case a second warrant shall have issued, as the case may require, unless further time, on application of the party, shall be granted by the court; and it shall be the duty of any executor, administrator or collector, taking out the warrant, to return the inventory or

inventories which shall be delivered to him by the appraisers; and on failure by the executor, administrator and collector, attachment may issue to enforce the return; and on the attachment the court shall have power to fine the party, not exceeding thirty dollars. *ibid. s.* 6.

Form of an Inventory.

Inventory of the Personal Estate of —— —— late of —— county, deceased, appraised in dollars and cents, by us the subscribers (being thereto lawfully authorised and sworn) this —— day of ——, anno ——

	Dolls.	Cts.
1 horse	60	
1 large dining table	10	
6 mahogany chairs	30	
1 bed and furniture	20	
1 bedstead and cord	8	
1 tin coffee-pot		30
6 old pewter spoons		30
(And so forth.)*		
	128	60

We the subscribers do certify that the foregoing is a true and just inventory and valuation, of the goods, chattels and personal estate of —— ——, late of —— county, deceased, as far as they have come to our sight and knowledge. Witness our hands and seals.

A. B. nearest of kin } —— ——, Seal.
C. D. creditor } —— ——, Seal.

* *The following are considered as assets in the hands of an executor or administrator, to wit: leases for years, estates for the life of another person or persons, except those granted to the deceased and his heirs only, and all goods, wares, merchandise, utensils, furniture, negroes, cattle, stock, provisions, tobacco, and every kind of produce, the crop on the land of the deceased by him or her begun, unless where the lands are devised, things annexed to the freehold or building, which may be removed without prejudice to the building, cloathing, ornaments, and every other species of personal property, (except those things which are denominated heir looms, and the clothes of a widow, and ornaments and jewels proper for her station, and the clothing of the family.)* 1798, *No.* 101, c. 7, s. 1.

If there be any of the persons interested in the administration within three miles of the place where the personal estate is to be appraised, it is the duty of the executor, administrator, or collector, and of the appraisers, to give notice to such persons or two of them at least, of the time and place appointed for making the appraisement. *ibid. s.* 7.

Every executor, executrix, administrator or administratrix, must, under a penalty not exceeding thirty dollars, return to the register's office within three calendar months, an inventory, with an affidavit of the truth annexed, of the money belonging to the deceased which hath come to his or her hands, and of the debts due to the deceased which have come to his or her knowledge, specifying the nature of each debt, and setting down such as he or she shall deem sperate, distinct and separate from those which he or she shall deem desperate or doubtful. *ibid. s.* 8.

Form of an Inventory of Sperate and Desperate Debts.

A list of debts due the estate of A. B. late of —— county, deceased.

	Sperate.	Desperate.
Joseph Jenks——on note carrying interest from the 1st May, 1803, - -		$ 11 00
Peter Hardy——on account,	$ 4 00	
Abraham Adolph——bond due 1st July, 1805, - -	100 00	
Benjamin Banks——on account,		5 15
	$ 104 00	$ 16 15

—— County, to wit.

On the *(9th)* day of *(October,* 1804*)* came *(A. B.)* one of the executors *(or administrators)* of *(C. D.)* late of —— county, deceased, and makes oath on the Holy Evangely of Almighty God *(or solemnly and sincerely affirms, as the case may be)* that the aforegoing list is true and just according to the best of his *(or her)* knowledge or belief.

(G. M.) Register.

Every collector must return, within three Calendar months (unless superceded) and in the form prescrib-

ed, with an affidavit of the truth annexed, an inventory of the money of the deceased, which he or she hath collected, belonging to the deceased, or received in discharge of debts due to the deceased. *ibid. s.* 9.

Whenever personal property of any kind, or assets not mentioned in an inventory already made out, shall come to the possession or knowledge of an executor, or executrix, or administrator, or administratrix, or collector, an account or inventory of the same shall be returned, appraised by two reputable disinterested sworn appraisers, appointed by any justice of the peace, or judge of any orphans' court, within two calendar months from the time of the discovery. *ibid. s.* 10.

If an inventory be returned by a collector, duly appointed, the executor, executrix, or executors, or administrator, administratix, or administrators, thereafter administering, shall, within three calendar months after the date of his, her, or their letters, either return a new inventory, in place of the collector's inventory, or any acknowledgment in writing, that he, she, or they, have received from the collector the articles contained in the first inventory, or consent to be answerable for the same, in the same manner as if the said inventory had been made out after his, her or their administering upon the estate; provided that nothing in this provision shall be construed to render any executor, &c. answerable for not making a return of the inventory aforesaid, wherein it shall appear to the court that he, she, or they, have been prevented from making such return by the improper detention of the goods of the deceased by the collector aforesaid. *ibid. s.* 11.

The executor or administrator shall either finish the crop on hand at the death of the deceased, or sell the same, as he shall judge the most convenient; and in case he shall not deem it convenient to finish the crop the person entitled to the land on the death of the testator or intestate, or his or her guardian or next friend for him or her, in case of infancy of the party, may take the said crop at the appraisement of the appraisers as aforesaid, paying ready money, or giving bond with good security, approved by the orphans court, or the register of wills of the said court, if the said court be not in session at the time of making such sale, for paying the money within six months; and in case the said party, or his or her guardian for him or her, shall not take the crop at an appraisement, the executor or administrator may sell the same to any other person, for ready money, or on credit as

aforesaid; provided nevertheless, that he shall not sell it at less than the appraisement, without the approbation of the orphans' court granting the administration, or an order, prescribing the terms, by the said court, passed as aforesaid. *ibid. s.* 12.

If an executor or administrator shall not, within three months after the date of his letters, exhibit to the orphans' court an inventory as aforesaid, a summons, returnable within not less than eight, or more than thirty days, may, *ex officio*, or on application of a person interested, be issued against such executor or administrator, to shew cause wherefore such inventory hath not been exhibited; and if the summons be duly returned "summoned," or upon two citations returned "*non est*," by the sheriff of the county wherein the party resided at the time of obtaining his letters, or of the county wherein the letters were obtained, in case the party doth not reside in the state, and if he doth not appear at the return of the summons, or appearing shall not shew cause satisfactory, the said court may immediately enter on its proceedings, and record, that the said letters be revoked, and may proceed to grant other letters, in the same manner as if such executor had not been named in the will, or as if such administrators were not in existence; and the power of such executor or administrator shall thereupon cease, and he shall be bound to deliver up, on demand, to the person obtaining such letters, all the property of the deceased in his hands, or be liable to be sued by such person on his administration bond, or the court may pass an order for the purpose. *ibid. s.* 13.

Form of a Summons, or Citation.

State of Maryland to the Sheriff of —— county, Greeting: We command you to cite and summon *(A. B. inserting the name)* that all excuses and delays set apart *(he or she)* be and appear before the judges of our orphans' court, to be held at the court-house in —— ——, on the *(fifteenth day of May)* next to shew cause, *(&c.)*

Whereof fail not, and have you then and there this writ. Witness, *(J. S.)* Esquire, presiding judge this *(third)* day of *(January*, 1804.*)*

If more than one executor or administrator be named in

the letters, any one or more of them, on the neglect of the rest, may return an inventory, and the executor or administrator so neglecting, shall not thereafter interfere with the administration, or have any power over the personal estate of the deceased; but the executor or administrator so returning shall thereafter have the whole administration, unless, within two months after the return, the delinquent or delinquents shall assign to the court some reasonable excuse which it shall deem satisfactory. *ibid. s.* 14.

Every executor or administrator shall within fifteen calendar months after the date of his or her letters, return to the court which granted them a full account of his or her administration; provided nevertheless, that if the said party shall, within four calendar months after the said date, make oath, (or affirmation, as the case may require,) that he or she hath reason to apprehend, and doth apprehend, that the personal estate and assets which are or shall be in his or her hands, will be insufficient to discharge the just debts of, and claims against the deceased, the court may, at discretion, allow a further time, not exceeding eighteen calendar months in the whole, from the said date, for returning the said account. 1798, *No.* 101, *c.* 8, *s.* 1.

The orphans court granting the letters shall have power to make allowance to any collector, executor or administrator, for property of the deceased, which hath perished, or been lost, without the fault of the party; and no profit shall be made, and no loss shall be sustained, by an executor or administrator, in the increase or decrease of the estate under his management; but the executor or administrator shall return an inventory and account for such increase, and may be allowed for such decrease on the settlement of the final or other account. *ibid. s.* 2.

If there be not money sufficient to discharge the just debts of, and claims against the deceased, the orphans' court will, on the application of an executor or administrator, made after return of an inventory, direct a sale of the whole property therein contained. If the court suspect fraud, collusion, connivance or improper management in the sale, or that it was unreasonably made, or that the property was sold much under its value, it has power to compel the executor or administrator to account for all such deficiencies as may have arisen from their misconduct. The court must always observe the inventory as their rule for ascertaining such deficiency. *ibid. s.* 3.

The orphans' court have power to direct a sale, either

ex-officio, or on application of the executor or administrator. *ibid. s.* 4.

Executors and administrators have full power and authority to commence and prosecute any personal action whatever, at law, or in equity, (as the case may require) which the testator might have commenced and prosecuted, except actions of slander and for injuries and torts done to the person; and in like manner, and with like exceptions, they are liable to be sued in any action which might have been maintained against the deceased; and they shall be entitled to, or be answerable for costs, in the same manner as the deceased would have been, and they shall be allowed for the same in their accounts, provided the court awarding costs against them shall certify, that there were probable grounds for instituting, prosecuting or defending, the action on which a judgment or decree shall have been given against them. *ibid. s.* 5.

Executors and administrators are not compelled to put in special bail in actions brought against them. *ibid. s.* 6.

If an executor or administrator conceives that he hath not assets sufficient to discharge the claim, or any part thereof, for which a suit shall be brought against him, he may plead the fact, and a trial by a jury shall be had thereupon; and if, on any trial so had against an executor or administrator, and the debt or demand of the plaintiff shall be contested, and there be any other issue joined than upon the subject of assets, the jury, if they find for the plaintiff upon the issues so to be joined, and the amount of assets so found by them be less than the debt or demand of the plaintiff, they shall declare the amount of the debt or demand, and likewise the sum to be paid by the defendant to the plaintiff, regard being had to the amount of assets in hand, and the debts due from the deceased, the court shall thereupon enter judgement against the defendant for the penalty of the bond, or damages laid in the plaintiff's declaration, and cost of suit, if the court shall so direct, which said debt or damages shall be released upon the payment of the sum ascertained to be paid by the verdict of the jury, and interest thereon from the time of rendering the said judgement, which said sum, so ascertained to be paid by the verdict of the jury, is to be levied of the goods and chattels of the deceased, or of the proper goods and chattels of the defendant, and residue of the debt or damages, so ascertained as aforesaid, is to be levied of the goods and chattels of the deceased which may hereafter come to the

hands of the defendant to be administered, with interest as aforesaid, or of the proper goods and chattels of the defendant; and if such goods and chattels shall thereafter come to the hands of the defendant, as executor or administrator as aforesaid, or into the hands of any other person who may have authority to administer the goods of the deceased, the plaintiff may issue on the said judgment a writ of *scire facias*, suggesting the coming of assets to the hands of the executor or administrator, liable and subject to the payment of the residue of the said debt or demand, with interest as aforesaid so due, upon which, if the defendant contests the same, there shall be a trial by jury as aforesaid; provided nevertheless, that in all cases where the amount of the claim of the plaintiff has been ascertained, by confession or otherwise, in any case now depending in any court, and the same has been referred to an auditor to ascertain the sum for which judgment shall be entered agreeable to the provisions of the act to which this is a supplement, that the auditor, previous to his marshalling the assets, shall cause notice to be given to the executor or administrator of the time and place of his proceeding to marshal the assets as aforesaid, and should it appear to the auditor that there has been no full or final account by the orphans' court he shall nevertheless proceed to marshal the assets, and ascertain as aforesaid, from the papers which may be produced to him, unless it shall be made appear to him, by a certificate from the orphans court, that there has been good cause why such full or final account has not been passed by such executor or administrator. 1802, *c.* 101, *s.* 1.

It is the duty of executors and administrators to pay all just claims against the deceased, exhibited to them, or a just proportionable part thereof, according to the assets; and if a claim be known to them (although not exhibited) they shall retain the amount, or a just proportionable part, for the benefit of the creditors, on satisfying the court that the claim is just, or may probably be recovered. When it is certain that a person out of the state has a claim, the amount of which cannot be ascertained, the court may allow such sum as it shall think proper to be retained, to be accounted for, nevertheless, if within three years after the death of the deceased no demand shall be made by the creditor, or his legal representative, and suit thereon brought on the rejection thereof by the executor or administrator, and from the time of making payment to, or a dividend amongst the creditors, as hereafter directed, all interest on

such claim, or proportionable part, shall cease; provided that the executor or administrator shall pay, or tender the same, together with such further part as shall be due on further money coming into hand, to the creditor, on demand; and in case the executor or administrator, on demand of a greater sum made by such creditor, shall tender the principal and interest which were due at the time of such dividend, or the just proportionable part, together with such further equitable proportion of assets, and the claimant shall notwithstanding bring suit, the said executor or administrator, at any time before judgement, may bring into court the money so tendered, or money to an equal amount, and if he shall satisfy the court, that the said sum was really the amount of the principal and interest due at the time of such dividend, or of the proportionable part to which the claimant was entitled at the dividend, together with such further proportion (if any there arose) the court shall thereupon give judgment, that the sum so brought in, deducting the costs sustained by the defendant, be paid to the plaintiff, and the said judgement shall be pleadable in bar to any action afterwards brought to recover the said debt; or, in case the executor or administrator shall not tender as aforesaid before the suit brought, the creditor shall recover no more than the proportionable part due at the time of the dividend, and such further proportion as he was entitled to on the coming in of further assets, with interest on each to the time of judgement. 1793, *No.* 101, *c.* 8, *s.* 10.

If any action be commenced or prosecuted against an executor or administrator, for the recovery of a larger debt or damages than the said executor or administrator shall think due so that the same cannot be ascertained before verdict, the executor or administrator shall be allowed to retain such sum to meet the said debt or damages as the orphans' court shall allow; and if more than enough be allowed, the party shall afterwards account for it, but nothing shall be retained on account of such further debt or damages, where the court shall be satisfied that there will be money sufficient coming in after such dividend to meet the said damages, or a just proportion thereof, regard being had to other claims. *Ibid. s.* 11.

The orphans' court have power, with the consent of both parties, (to be entered on their proceedings) to arbitrate between a claimant and an executor or administrator; or

the dispute may, by the parties, be referred to any person approved by the orphans' court. *ibid. s.* 12.

No executor or administrator, who shall, after the lapse of one year from the date of his letters, have paid away assets to the discharge of just claims, shall be answerable for any claim for which he had no notice or knowledge; provided, that at least six months before he shall make distribution, he shall have caused to be inserted in such and so many newspapers as the orphans' court may direct, an advertisement, as follows, or fully to the following effect, viz.

Form of the Advertisement.

This is to give notice,

That the subscriber (or subscribers) of ——, hath (or have) obtained from the orphans' court of ——, county in Maryland, letters testamentary (or of administration) on the personal estate of —— ——, late of ——, deceased. All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at or before the —— day of —— next, they may otherwise by law be excluded from all benefit of the said estate. Given under my hand, this —— day of ——.

—— ——, *Executor, (or administrator as the case may be.)*

It is the duty of an executor or administrator, within thirteen calendar months after the date of his letters, or within such further time, not exceeding four months longer, as shall be allowed by the orphans' court, on his making oath (or affirmation) as aforesaid respecting the insufficiency of the personal estate to discharge all just claims known to him, or pay each claimant his just proportion of the money then in his hands, (retaining as before directed;) it shall likewise be his duty, once in every term of six months, after the first distribution, to make distribution of the money which hath since come into his hands, until he shall have fully administered, and on failure his administration bond may be put in suit. *ibid. s.* 14.

In case all the assets shall have been paid away, or delivered, or distributed in the manner hereafter directed, and a claim shall afterwards be exhibited, of which the executor or administrator hath not knowledge or notice, he shall not be answerable for the same; and if he be sued for any

claim, and shall make it appear to the court in which suit is brought, that he hath so paid away, delivered or distributed, and the plaintiff cannot prove that the defendant had knowledge or notice as aforesaid before such payment, delivery or distribution, the court shall not proceed to give judgement (although the amount of the claim against the deceased may be ascertained as herein before directed) until the plaintiff shall be able to shew further assets coming into the defendant's hands; but if the plaintiff shall prove notice or knowledge of the said claim, against the defendant, judgement may immediately be given for such sum as the plaintiff ought to have received at the dividend, and *fieri facias* may issue and have effect, and further judgement may be given, as directed on coming in of further assets. *ibid. s.* 15.

In all cases where an executor or administrator is to make a payment of distribution among creditors, he may give notice, three weeks successively, in some convenient news-paper, of the time and place for making it, and in case any creditor shall not attend in person, or by agent or attorney, to receive the amount or proportionable part of the claim, all interest on such claim or proportionable part shall cease from that time; provided, that the executor or administrator shall, at any time thereafter, on demand, pay the said claim or proportionable part, to the party, his agent or attorney, duly authorised: And whenever the executor or administrator shall proceed to make an additional payment or dividend, he may advertise as aforesaid, and interest shall stop as aforesaid; and if at any additional dividend, a just claim established [*as directed under the head of Accounts*] shall be exhibited, the creditor shall be entitled to such sum as will place him on an equal footing with those who have already received a dividend. *ibid. s.* 16.

In paying the debts of the deceased, an executor or administrator shall observe the following rules: Judgements and decrees against the deceased shall be wholly discharged before any part of other claims; after such judgements and decrees shall be satisfied, all other just claims shall be admitted to a distribution, on an equal footing, without priority or preference; if there be not sufficient to discharge all such judgements and decrees, a proportionable division or dividend shall be made between the judgement and decree creditors, but no executor or administrator shall be bound to discover what judgement or decrees have been passed against the deceased, unless in the high court of chancery, or

the general court, of the shore, or the court of the county, where the deceased last resided. *ibid. s.* 17.

If a claim be exhibited against an executor or administrator, which he shall think it his duty to dispute or reject, he may retain in his hands assets proportioned to the amount of the claim, which assets shall be liable to other claims, or be delivered up or distributed as hereafter mentioned, in case the claim be not established; and if on any claims exhibited and disputed as aforesaid, the creditor or claimant shall not, within nine months after such dispute or rejection, commence a suit for recovery, the said creditor or claimant shall be forever barred; and the executor or administrator may plead the act in bar, together with the general issue, or other plea proper to bring the merits of the cause to trial; and, on any dividend to be made nine months after such dispute or rejection, and failure to bring suit, the executor or administrator may proceed to pay, or distribute, as if he had not knowledge or notice of such claim, or as if it did not exist, but if the claim be put in suit within the nine months, it may be ascertained by verdict or otherwise, and the court shall proceed as herein before directed, regard being had to the rules herein before laid down as to the notice to be given by the executor or administrator, and distribution or payment to be made after such notice. *ibid. s.* 18.

In no case shall an executor or administrator be allowed to retain for his own claim against the deceased, unless the same be passed by the orphans' court, and every such claim shall stand on equal footing with other claims of the same nature. *ibid. s.* 19.

The bare naming of an executor in a will shall not operate to extinguish any just claim which the deceased had against him, but it shall be the duty of every such executor, accepting the trust, to give in such claim in the list of debts, and on his failure to give in such claim, or any part thereof, any person interested in the administration may alledge the same, by petition to the orphans' court granting the administration, and the said court, with consent of the parties, may decide on the same, or it may be referred by the parties, with the court's approbation, or, at the instance of either party, the court may direct an issue or issues to be tried, and the same shall be tried in any court of law proper for the trial, and most convenient under all circumstances; and the court of law shall have power to direct the jury, and grant a new trial, as if the issue or issues were in a suit therein institut-

ed, and a certificate from such court, or any judge thereof, of the verdict or finding of the jury, under the seal thereof, shall be admitted by the orphans' court to establish or destroy the claim, or any part thereof; and if the executor shall give in such claim, or the same, or any part, be established as aforesaid, he shall account for the sum due in the same manner as if it were so much money in his hands, and on failure his bond may be put in suit. *ibid. s.* 20.

In like manner it shall be the duty of every administrator to give in a claim against himself, and on giving it, or failure to give it in, there shall be the same proceedings in every respect as are herein prescribed with regard to an executor. *ibid. s.* 21.

No executor or administrator shall discharge any claim against the deceased, (otherwise than at his own risk,) unless the same be first passed by the orphans' court granting the administration, or unless the said claim be proved according to the following rules. *ibid. s.* 22. [*See Accounts.*]

If the creditor be an executor or administrator, the claim shall not be received, although regularly vouched or approved unless he make oath or affirmation, to be properly certified "that it does not appear from any book or writing of his testator, (or intestate) that any part of the said claim hath been discharged, except what (if any) is credited, and that, to the best of the deponent's knowledge and belief, no part of the said claim hath been discharged, and no security or satisfaction hath been given for the same, except what (if any) is credited." 1798, *No.* 101, *c.* 9, *s.* 14.

No executor or administrator shall be allowed in his account for any claim by him discharged, unless he produce the claim, passed by the orphans' court, or proofs or vouchers as aforesaid. *ibid. s.* 15.

In the account of an executor or administrator shall be stated, on one side, the assets which have come to his hands, according to the inventory or inventories returned to the court, or received and appraised as herein before directed, after the inventory or inventories returned, and the sales which have been made under the court's direction; that is to say, the inventory or inventories are to shew the articles of the estate, and the sales the amount of their value, where they had been sold, and for articles so sold he shall be charged the price, according to the return; and if articles have been sold for credit, and not yet paid for, it shall be accounted for in a subsequent account. 1793, *No.* 101, *c.* 10, *s.* 1.

On the other side shall be stated the disbursements by him made, viz. 1. Funeral expences, to be allowed at the discretion of the court, according to the condition and circumstances of the deceased, not exceeding three hundred dollars. 2. The debts of the deceased, proved or passed as aforesaid, and paid or retained. 3. The allowance for things lost, or which have perished without the party's fault, which allowance shall be according to the appraisement. 4. *His commission*, which shall be, at the discretion of the court, not under five *per cent.* nor exceeding ten *per cent.* on the amount of the *inventory or inventories*, excluding what is lost or hath perished. 5. His allowance for costs, and for extraordinary expences, (not personal,) which the court may think proper to allow, laid out in the recovery or security of any part of the estate. *ibid. s.* 2.

If the first account, to be returned as aforesaid, shall not shew the estate which was on hand to be fully administered, another account shall be returned within six months thereafter, and within every term of six months thereafter an account shall be returned, until the estate shall appear to be fully administered; and whenever a discovery or receipt of assets shall take place, after rendering an account, another account shall be rendered within six months thereafter; provided nevertheless, that an executor or administrator shall not be obliged to render accounts, when it appears to the court that the estate has been fully administered, except debts which the court shall set down and deem as desperate, unless the same shall afterwards be recovered. *ibid. s.* 3.

The court shall examine every list of debts returned by an executor or administrator with the inventory, and for every debt which the court shall not mark as desperate, or improper to be put in suit, the executor or administrator shall commence a suit, unless the debt be paid within six months thereafter, or unless the debtor be out of the state, or unless the court shall think reasonable an excuse made within one month after the lapse of the said six months for not bringing suit; and on failure to bring suit as aforesaid, the party shall be liable to a suit on his administration bond, and to such damages as shall be found by the jury. *ibid. s.* 4.

It is not the intent of the act that an executor or administrator be answerable, at all events, for a debt which he shall return sperate, but merely to enable the court, and all parties concerned, to form a just estimate of the circumstances of the deceased. *ibid. s.* 5.

When it shall appear by the first, or other account of an

executor or administrator with the will annexed, that all the claims against, or debts of, the deceased, which have been known by or notified to the said executor or administrator, have been discharged, or retained for, or settled, it shall be his duty to deliver up the estate in his hands to those entitled, provided, that his duty and power with respect to future assets shall not cease; and after such delivery he shall not be liable for any debt afterwards notified to him, provided he shall have advertised, as herein before directed, unless assets shall afterwards come into his hands, which shall be answerable for such debts. *ibid. s.* 6.

As it often happens that an executor or administrator hath in his hands assets to a great amount, and there is no reason to apprehend that they will be nearly exhausted in payment of debts, and those entitled after payment of debts are in want of subsistence, or greatly straitened in their circumstances, in case any person so entitled shall apply, by petition, and satisfy the court that he or she is really in want of subsistence, or greatly straitened in circumstances, and that it probably will not require more than one half of the assets to discharge the debts, the court may direct the executor or administrator to deliver to the petitioner any part of what the court shall suppose will be the petitioner's distributive share, or any part of a legacy or bequest in money, not exceeding one third part, the said petitioner giving bond, with security, approved by the court, to the executor or administrator, for returning the same, or an equivalent, with interest, whenever so directed by the court; and the court shall have power to determine, in a summary manner, on any such petition, after a summons against such executor or administrator duly returned either summoned or *non est. ibid. s.* 7.

And the court, in like manner, on any petition by a person in such circumstances, to whom a specific legacy or bequest hath been made, being satisfied that the assets, exclusive of all specific legacies, will not nearly be exhausted by debts, may direct the executor or administrator to deliver to the petitioner the said specific legacy or bequest, on his or her giving bond as aforesaid. *ibid. s.* 8.

If an executor or administrator shall fail to return an account as herein before directed within the time limited by law, or by the court, his letters, on application of any person interested, may be revoked, and such administration, (as the case may require,) may be granted at discretion of the court; and the administrator, to whom letters shall be granted, shall

be entitled to put the delinquent's bond in suit, and to recover such damages thereon as the jury may find; and in assessing such damage it shall be the duty of the jury to allow such sum as will be equal to six *per cent. per annum* on the amount of the inventory or inventories from the time of the return or returns to the time of the verdict, over and beyond the damages, for such loss or injury as the estate may have sustained by the delinquent's conduct. *ibid. s.* 9.

Whenever it shall appear by the first or other account of an administrator, that all the debts of, or claims against, the estate, known by or notified to him, have been discharged or allowed for in his account, it shall be his duty to deliver up and distribute the surplus or residue of the estate as hereafter directed, provided that his power and duty, with respect to future assets, shall not cease; and after such delivery, the administrator shall not be answerable for any debt afterwards notified to him, provided he shall have advertised as herein before directed, unless assets shall afterwards come into his hands which shall be liable for such debts. *ibid. s.* 10.

If by the provisions in a will it shall be necessary for an executor, or for an administrator with a copy of the will annexed, to retain in his hands the personal estate, or a part thereof, after all just claims are discharged, as where money, or some other thing is directed to be paid at a distant period, or upon a contingency, the court of chancery or the orphans' court shall have power, on the application of such executor or administrator, or of a party interested, to decree or give directions relative thereto; and it shall be the duty of such executor or administrator, to apply to the court of chancery or the orphans' court, and the said courts respectively shall have full power to decree or direct what part of the personal estate shall be retained or appropriated for the purpose, and in what manner it shall be disposed of, and the legacy or benefit intended by the will shall be secured for the person to be entitled at a future period, or contingency, and how the necessary part of the personal estate, to be appropriated for the purpose, shall be prevented from lying dead, or being unproductive, and how it shall be applied, agreeably to the intent of the will, or the construction of law, in case the contingency shall not take place. *ibid. s.* 11.

When all the debts of an intestate, exhibited and proved, or notified and not barred, shall have been discharged, or settled and allowed to be retained, as herein directed, the administrator shall proceed to make distribution of the surplus as follows,

If the intestate leave a widow, and no child, parent, grandchild, brother or sister, or the child of a brother or sister of the said intestate, the said widow shall be entitled to the whole. 1798, *No.* 101, *c.* 11, *s.* 1.

If there be a widow, and a child or children, or a descendant or descendants from a child, the widow shall have one third only. *ibid. s.* 2.

If there be a widow, and no child, or descendants of the intestate, but the said intestate shall leave a father, or mother, or brother or sister, or child of a brother or sister, the widow shall have one half. *ibid. s.* 3.

The surplus, exclusive of the widow's share, or the whole surplus, (if there be no widow,) shall go as follows. *ibid. s.* 4.

If there be children, and no other descendant, the surplus shall be divided equally amongst them. *ibid. s.* 5.

If there be a child or children, and a child or children of a deceased child, the child or children of such deceased child shall take such share as his, her or their deceased parent, would (if alive) be entitled to; and every other descendant or other descendants, in existence at the death of the intestate, shall stand in the place of his, her or their deceased ancestor; provided, that if any child, or descendant, shall have been advanced by the intestate, by settlement or portion, the same shall be reckoned in the surplus, and if it be equal, or superior to a share, such child or descendant shall be excluded, but the widow shall have no advantage by bringing such advancement into reckoning; and maintenance, or education, or money given without a view to a portion or settlement in life, shall not be deemed advancement; and in all cases those in equal degree, claiming in the place of an ancestor, shall take equal shares. *ibid. s.* 6.

If there be a father, and no child or descendant, the father shall have the whole. *ibid. s.* 7.

If there be a brother or sister, or child or descendant of a brother or sister, and no child, descendant, or father of the intestate, the said brother, sister or child, or descendant of a brother or sister, shall have the whole. *ibid. s.* 8.

Every brother and sister of the intestate shall be entitled to an equal share, and the child or children of a brother or sister of the intestate shall stand in the place of such brother or sister. *ibid. s.* 9.

If the intestate leave a mother, and no child, descendant, father, brother, sister or child, or descendant of a brother or sister, the mother shall be entitled to the whole, and in case there be no father, a mother shall have an equal share with

the brothers and sisters of the deceased, and their children and descendants. *ibid. s.* 10.

After children, descendants, father, mother, brothers and sisters, of the deceased, and their descendants, all collateral relations, in equal degree, shall take, and no representation amongst such collaterals shall be allowed; and there shall be no distinction between the whole and half blood. *ibid. s.* 11.

If there be no collaterals, a grand-father may take, and if there be two grand-fathers, they shall take alike, and a grand-mother, in case of the death of her husband the grand-father, shall take as he might have done. *ibid. s.* 12.

If any person entitled to distribution shall die before the same be made, his or her share shall go to his or her representatives. *ibid. s.* 13.

Posthumous children of intestates shall take in the same manner as if they had been born before the decease of the intestate, but no other posthumous relation shall be considered as entitled to distribution in his or her own right. *ibid. s.* 14.

If there be no relations of the intestate within the fifth degree, which degree shall be reckoned by counting down from the common ancestor to the more remote, the whole surplus shall belong to the state, to be applied as the legislature shall hereafter direct, saving to the different schools in this state the rights which by existing laws they now respectively possess. *ibid. s.* 15.

In case the surplus remaining in the administrators' hands after payment of all just debts exhibited and proved, or notified and not barred, or after retaining for the same, shall consist of specific property, or articles mentioned in the inventory or inventories, the administrator, if he cannot satisfy the parties, may apply to the court to make the distribution, and the court may appoint a day for making distribution, and by summons call upon the said parties to appear, and the said court may, at the appointed time, proceed to distribute, but if a majority in point of value shall neglect to appear, or appearing shall object to the distribution of the articles, or if the court shall deem a sale of the said articles, or any part of them, more advantageous, a sale shall be directed accordingly, and the rules herein before laid down, relative to a sale by order of the said court, shall be observed. *ibid. s.* 16.

Whenever land shall descend, or be devised, to a male under the age of twenty-one years or to a female under six-

teen, or any such male or female shall be entitled to a distributive share of personal estate of an intestate, or to a legacy or bequest under a last will or codicil, and the said male or female shall not have a natural guardian, or guardian appointed by last will, agreeably to the statute in that case provided, the orphans' court of the county where the land lies, or in which administration of the personal estate is granted, shall have power to appoint a guardian to such infant, until the age of twenty-one years (if a male,) and until the age of sixteen (if a female,) or marriage, and such appointment may be made at any time after the probat of the will, or administration granted on the estate of the deceased, under whom the infant appears to be so entitled to land; and it may be made, if the court shall think proper, in the case of personal estate, either before or after the executor or administrator shall have passed his account. 1798, *No.* 101, *c.* 12, *s.* 1.

The said court shall have power to call or have brought before them any orphan as aforesaid, for the purpose of appointing a guardian. *ibid. s.* 2.

The court shall also have power, on application of any friend of the infant as aforesaid entitled to land, or a legacy, or distributive share, to call on any guardian under the statute aforesaid, or natural guardian, to give bond for the performance of his or her trust, and the court, at discretion, may direct such bond to be given; and on the guardian's failure or neglect, the court may appoint another guardian. *ibid. s.* 3.

And every guardian appointed by the court, before he shall have authority to act as such, shall enter into bond to the state of Maryland, in such penalty, and with such sureties, as the court shall approve; and the said bond shall be recorded, and be subject to be put in suit, and be in all respects on a footing with the bond given by an executor or administrator; and the form of the condition of it shall be as follows: *ibid. s.* 4.

Form of the Bond.

Know all men by these presents, &c.

The condition of the above obligation is such, that if the above bounden —— ——, as guardian to —— ——, of —— county, shall faithfully account with the orphans' court of —— county, as directed by law, for the management of the

property and estate of the orphan under his care, and shall also deliver up the said property, agreeably to the order of the said court, or the directions of law, and shall in all respects perform the duty of guardian to the said ——, according to law, then the above obligation shall cease; it shall otherwise remain in full force and virtue in law.

On a guardian's executing such bond, the court shall have power to order the land, distributive share, or other property belonging to such orphan, to be delivered to such guardian immediately, or at such time as shall appear reasonable; in the case of a legacy or bequest, the court shall direct the delivery as soon as it shall appear that the same may be delivered without prejudice to the person administering; and in the case of a distributive share, the court shall direct the delivery as soon as the same shall be ascertained; and on failure of any former guardian appointed by the court, or of an executor or administrator, to comply with such order, his bond may be put in suit, and he may also be attached for contempt, and fined not exceeding three hundred dollars aforesaid; and the court shall have power to call on any guardian for new security, and on failure, may appoint a new guardian. *ibid. s. 5.*

Every guardian appointed by the court, having the care of a real estate, shall, within three months after executing his bond, procure the said estate to be viewed and reported on by two skilful discreet persons, not related to either party, and appointed by the orphans' court, which two persons, before they proceed to act, shall swear, or affirm, as the case may be, before some judge or justice, that they will appraise the same without favor or prejudice, and to the best of their skill and judgement; and it shall be the duty of the appraisers to examine the estate, and estimate the annual value thereof, including any slaves, working beasts and stock, and utensils thereon belonging to the orphan, and proper to be leased with the land; they shall likewise set down, in writing, what dwelling-houses, out-houses, orchards, gardens, meadows, enclosures, and other improvements, are on the land, and the condition thereof, and what proportion of the said land is in their estimation in woods; and they shall make a certificate, under their hands and seals, of the whole they have done, to which shall be annexed a certificate of their appointment, and of their having taken the oath or affirmation as aforesaid, and the same shall be returned by the

guardian to the orphans' court, within three months as aforesaid; and the same shall be evidence against him, in case of any suit for misconduct brought against him. *ibid. s.* 6.

Form of an Appointment of persons to value the Estate of a Minor in the hands of a Guardian, by the Orphans' Court.

By the Orphans' Court, —— *county*, —— *term*, ——.

You *(A.* and *B.)* are hereby appointed to view and estimate the annual value of the real estate of *(C. D.)* a minor, in the hands of *(E. F.)* his guardian, including slaves, working beasts, stock, and utensils thereon belonging to the said minor, and proper to be leased with the land, and set down, in writing, what dwelling-houses, out houses, orchards, gardens, meadows, enclosures, and other improvements are on the said land, and the condition thereof, and what proportion of the land, in your estimation, is in woods, and make out a certificate under your hands and seals, of the whole you have done, to which you shall annex this appointment, and of your having taken an oath, (or affirmation) "that you will appraise the same without favor or prejudice, and to the best of your skill and judgement." Witness—J. S. chief justice of the orphans' court —— county, the —— day of ——, ——.

Test. G. M. Register of Wills for —— county.

Form of an Oath to be taken by two Persons to value the Estate of a Minor, in the hands of a Guardian.

———— County, To Wit.

On this —— before me the subscriber, one of the justices of the peace in and for said county, appears *(A.* and *B.)* and make oath on the Holy Evangely of Almighty God, that they will appraise the estate of *(C. D.)* a minor, without favor or prejudice, and to the best of their skill and judgement. Witness my hand. J. S.

Form of a Return by such Appraisers.

We the subscribers appointed by the orphans' court of —— county, to view the estate of *(C. D.)* a minor in the hands of *(E. F.)* his guardian, and to estimate the annual value thereof—and further, to do what is enjoined by the annexed appointment—Do hereby certify, that we have valued the real estate of *(C. D.)* and estimate the annual value thereof, at £.40 current money—including, (if any) slaves, beasts and utensils for farming. There is on the land, a log dwelling house, 20 by 30 feet, in good repair, a good stone smoke house, a good stone spring house, a good round log barn, with 2 pens, 16 by 24 feet, thatched roof in good order, an apple orchard of 60 young thriving apple trees, and 20 peach trees, all bearing, a paled garden in good order, 80 by 150 feet, a meadow of 10 acres, in good condition, fencing but indifferent; there are about thirty-eight acres clear tillable land, exclusive of the meadow, orchard or garden, and about 50 acres in woods, well timbered; the whole tract containing 100 acres, being part of a tract of land call "Spring Garden." In witness whereof we have hereto annexed our said appointment, and the oath by us taken this —— day of ——.

A. ——,
B. ——.

To the Register of Wills for—— county.

No guardian shall commit waste on the land, but the court may, on his application, allow him to cut down and sell wood, and account for the same, in case it shall deem the same advantageous or necessary for the ward's education and maintenance. *ibid. s. 7.*

And each guardian having a real estate under his care, shall either cultivate the same, with the slaves, stock and utensils, belonging to the ward, or to be purchased with his or her money, with the approbation of the court, or he shall lease the same from year to year, or for any term not exceeding three years, and within the non-age of the ward; or he may, with the court's approbation, undertake the estate on his own account, and be answerable for the annual value, such annual value to be every third year ascertained, under the direction of the court. *ibid. s. 8.*

Every guardian shall account for all profit and increase of the estate, or annual value as aforesaid, and shall not be an-

swerable for any loss or decrease sustained without his fault, to be allowed by the orphans' court. *ibid. s.* 9.

And once in each year, or oftener if required, a guardian shall settle an account of his trust with the orphans' court; and the said court shall ascertain, at discretion, the amount of the sum to be annually expended in the maintenance and education of the orphan, regard being had to the future situation, prospects and destination, of the ward; and the said court, if it shall deem it advantageous to the ward, may allow the guardian to exceed the income of the estate, and to make use of his principal, and to sell part of the same, under its order; provided nevertheless, that no part of the real estate shall, on account of such maintenance or education, be diminished, without the approbation of the court of chancery, or general court, as well as of the orphans' court. *ibid. s.* 10.

And on the first account to be rendered by a guardian, he shall state the property by him received from an executor or administrator, or otherwise belonging to his ward, and every increase, and the profits thence arising, if any. *ibid. s.* 11.

Form of an account to be rendered by a Guardian.

Dr.——*C. D. a ward* | *To E. F. his Guardian*——*Cr.*

1803			
Nov.	*l.*	*s.*	*d.*
To taxes paid collector pr. receipt,	2	4	6
To clothing pr. vouchers	10	5	6
To paid for schooling 1 year	6	0	0
To paid for 1 year's boarding	27	10	0
To balance pr. Cr.	100	0	0
£.	146	0	0

1803			
Oct. 18	*l.*	*s.*	*d.*
By cash of G. H. adm'r. of I. J. your distributive share,	100	0	0
By 1 year's interest to 18th Oct. 1804	6	0	0
By 1 year's rent on your lands pr. valuation	40	0	0
£.	146	0	0
1804			
Oct. 18			
By bal. due you *£.*	100	0	0

Form of Probat to the foregoing.

On the —— day of —— came *(E. F.)* Guardian to *(C. D.)* before the orphans' court, and made oath on the holy Evangely of Almighty God, that the foregoing charges and credits are just and true.

Test. G. M. Register of Wills for —— county.

In case the personal property of a ward shall consist of specific articles, such as slaves, working beasts, animals of any kind, stock, furniture, plate, books, and so forth, the court, if it shall deem it advantageous for the ward, may at any time pass an order for the sale thereof for ready money, or on credit, the purshaser, with security, giving bond to the said ward, bearing interest; and all proceeds relative to such sale shall be as herein directed with respect to sales by executors or administrators. *ibid. s.* 12.

Every account of a guardian shall state his expenditures in maintaining and educating the ward, not exceeding the income of the estate, unless allowed by the court; and for no balance of money in his hands shall he be charged interest, unless he shall consent to take the same on interest, but the court may direct him to place the same at interest, taking bond to the orphan, with security approved by the court; and for the trouble and care of such guardian, the court may allow any commission, not exceeding ten *per cent. ibid. s.* 13.

On a guardian's failing to account as herein directed, his bond shall be liable to be put in suit, and he shall be also liable to attachment and fine as aforesaid, but he shall not be liable to any fine in a court of law, any act to the contrary notwithstanding. *ibid. s.* 14.

On the ward's arrival at age as aforesaid, the guardian shall exhibit a final account to the orphans' court, and shall deliver up agreeably to the court's order, to the said ward, or the husband, (as the case may require,) all the property of such ward, in his hands, including bonds, and other securities, and on failure his office bond shall be liable, and he shall also be liable to attachment and fine as aforesaid. *ibid. s.* 15.

Nothing in this act contained shall be construed to affect the general superintending power exercised by the court of chancery with respect to trust. *ibid. s.* 15.

Every devise of land, or any estate herein, or bequest of personal estate, to the wife of the testator, shall be construed to be intended in bar of her dower in lands, or share of the personal estate respectively, unless it be otherwise expressed in the will. 1798, *No.* 101, *c.* 13, *s.* 1

A widow shall be barred of her right of dower in land, or share in personal estate, by any such devise or bequest, unless within ninety days after the authentication or probat of the will, she shall deliver, or transmit to the court where such authentication or probat hath been made, a written renunciation in the following form, or to the following effect:

Form of Renunciation.

I, A. B. widow of —— ——, late of ——, deceased, do hereby renounce and quit all claim to any bequest or devise made to me by the last will of my husband, exhibited and proved according to law; and I elect to take, in lieu thereof, my dower, or legal share of the estate of my said husband.

A. B.

But by renouncing all claim to a devise or bequest, or devises or bequests of personal property, made to her by the will of her husband, she shall be entitled to one third part of the personal estate of her husband, which shall remain after payments of his just debts, and claims against him, and no more. *ibid. s.* 2

If the will of the husband devise a part of both real and personal estate, she shall renounce the whole, or be otherwise barred of her right to both real and personal estate. *ibid. s.* 3.

If the will devise only a part of the real estate, or only a part of the personal estate, the devise shall bar her of only the real, or personal estate, as the case may require; provided nevertheless, that if the devise of either real or personal estate, or of both, shall be expressly in lieu of her legal share of one or both, she shall accordingly be barred, unless she renounce as aforesaid. *ibid. s.* 4.

But if in effect, nothing shall pass by such devise, she shall not be thereby barred, whether she shall or shall not renounce as aforesaid, it being the intent of this act, and consonant to justice, that a widow accepting, or abiding by a devise, in lieu of her legal right, shall be considered as a purchaser with a fair consideration. *ibid. s.* 5.

If a widow commit waste in the lands of the deceased, she shall be liable to action by the heir or devise, or his or her guardian; and if she marry a second husband, he shall be answerable for any waste committed by her before marriage, or by himself. *ibid. s.* 6.

A widow's remedy for dower shall be as heretofore. *ibid. s.* 7. [*By writ out of the county court.*]

If any person entitled to administration, shall deliver, or transmit to the orphans' court, a declaration, in writing, that he is willing to decline the trust, the court shall proceed as if such person were not entitled. 1798, *No.* 101, *c.* 14, *s.* 1.

Form of Renunciation of Administration.

To the Register of Wills of —— County.

I *(A. B.)* widow of *(C. B.)* late of —— County, deceased, do hereby refuse to administer on the estate of said deceased. And do therefore renounce all my right, title, and claim to said administration, desiring at the same time that letters of administration may be granted to —— —— of the County aforesaid *(who is one of the greatest creditors of the deceased)* as witness my hand this —— day of ——.——.

Test. —— —— A. B.

[The same form of renunciation will answer for any other than a widow, by altering the words to suit the circumstances of the case.]

If an executor or administrator shall die before administration is completed, letters *de bonis non* may be granted at the discretion of the court, with a copy of the will annexed, (if the case require,) giving preference, however, to the person entitled, if he or she shall actually apply for the same; and the form of the letters shall be as herein before directed, except that the words "already not administered," be added in their proper place; and the authority conferred by such letters shall be to administer all things herein described as assets, not converted into money, and not distributed or delivered, or retained by the former executor or administrator, under the court's direction. *ibid. s.* 2.

A common warrant for land *not executed* or *located* in the *life-time* of the deceased, shall be *assets* after his death, in

the hands of an executor or administrator, and subject to distribution, as well as every debt due to, or just claim of, the deceased; and if a common warrant for land be executed or located as aforesaid, it shall be considered as the property of the heirs. *ibid. s.* 3.

No personal action shall abate by the death of either party, but executors and administrators shall notice and conform to the directions of the act of seventeen hundred and eighty-five, chapter eighty, respecting their prosecution or defence of such action. *ibid. s.* 4.

If any thing be bequeahted to an executor, by way of compensation, no *allowance of commission shall be made*, unless the said compensation shall appear to the court to be insufficient, and if so, it shall be reckoned in the commission to be allowed by the court. *ibid. s. 5.*

No executor shall be obliged to exhibit any *inventory*, or *account*, provided he will give *bond*, instead of the bond herein before directed, with such security, and in such penalty, as the court shall approve, to the state of Maryland, to be recorded and sued as before directed; provided the said executor be residuary legatee, or provided the residuary legatee of full age, shall notify his or her consent to the court; and in case such bond be given by an executor, he shall be answerable for all debts, claims and damages, recovered against him as executor; and if suit be brought against him as executor, the judgement shall be for the whole sum found by the jury, or otherwise ascertained, and execution may issue, and have effect, as if he were sued in his own right; and any legatee shall be entitled to recover the full amount of his legacy, either in a suit upon the said executor's bond, or in a suit in chancery, as is usual in case of legacies, or in an action on the case, in which the giving of such bond shall be considered as an assent to the legacy. *ibid. s.* 6.

Form of a Bond to be given by an executor who is entitled to the residue of an Estate after the payment of Debts and Legacies.

Know all men by these presents, that we *A. B.* and

I.

C. D.) of —— county, and state of Maryland, are held and firmly bound unto the said state of Maryland, in the sum of —— —— current money, to be paid to the said state or to its certain attorney, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this —— day of ——, ——.

The condition of the above obligation is such, that if the above bounden *(A. B.)* executor of the last will and testament of *(E. F.)* late of said county, deceased, shall faithfully pay all just debts of, and claims against *(E. F.)* and all damages which shall be recovered against him as executor, and also all legacies bequeathed by the will of his Testator, then the above obligation to be void and of none effect, otherwise of full force and virtue in law.

Signed, sealed and delivered, in presence of G. M. Register of Wills, —— county. } A. B. Seal. C. D. Seal.

No administrator, entitled to the whole residue after payment of debts of, and claims against, the intestate, shall be obliged to return an inventory or account, provided he will give bond, with such security, and in such penalty, as the court shall approve, conditioned for paying all debts, claims and damages, which shall be recovered against him, as administrator; and in case he shall give such bond, he shall be answerable for all debts, claims and damages aforesaid, and judgement may be given, and execution may issue and have effect, as herein directed with respect to an executor giving a similar bond. *ibid. s. 7.*

Form of a Bond to be given by an Administrator who is entitled to the residue of an Estate after payment of Debts and Legacies.

Know all men by these presents, &c.

The condition of the above obligation is such, that if the above bounden *(A. B.)* as administrator of *(E. F.)* late

of —— county, deceased, shall faithfully pay all debts, claims and damages, which shall be recovered against him, as administrator of *(E. F.)* late of —— county, deceased, the above obligation to be void and of none effect, otherwise of full force and virtue in law.

Signed, sealed and delivered in presence of G. M. Register of Wills —— county. } A. B. Seal. C. D. Seal.

The rules and regulations herein contained, relative to last wills and codicils shall be construed to extend to all cases where the testator or testatrix shall die after the time when the operation of this act shall commence, without regard to the time of making the will or codicil. *ibid. s.* 8.

Forasmuch as it is the intent of the law now in force, as well as of this act, that executors and administrators should suffer no loss from the decrease of the estate, and make no gain from the increase, and that, when necessary for paying debts, a sale shall take place, and the said executor or administrator be accountable for the amount of the sales, in every case where letters testamentary or of administration have already been granted, and the administration hath not been completed, or a final account passed, the rules herein before laid down, relative to the duties and powers of executors and administrators, and the remedies against them, shall govern and prevail with respect to such part of the administration as shall remain incomplete at the time when the operation of this act is to commence; provided nevertheless, that this act shall not be construed to deprive any executor or administrator of any right which accrued to him by entering on his trust, or to exempt any executor or administrator from any remedy or proceeding against him, which any person is or shall be entitled to on account of his not having observed the directions of the law now in force. *ibid. s.* 9.

All rules herein contained, relative to an executor or administrator, shall apply and extend to an executrix or administratrix, or executors or administrators respectively, unless otherwise expressly provided for; and whenever any party in the singular number, or a male party is mentioned, the rule shall apply to a female, or to two or more having a joint interest, or jointly concerned, applying or called upon, so far as the rule can with propriety apply, or so far as is not otherwise directed. *ibid. s.* 10.

If any security of an executor or administrator shall conceive him or herself in danger of suffering from the suretyship, he may apply to the orphans' court which granted the administration, and the said court may call upon the party to give counter security, to be approved by the court; and if the party so called on shall not, within a fixed reasonable time give such counter security, the court may order the property remaining in the hands of such executor or administrator to be delivered up to such security, and the court may enforce the delivery, *by process*, as hereafter directed; and an inventory of the property delivered to such security shall be returned without delay, and the property contained in such inventory shall be by the said security sold, distributed and delivered up, as the case may require, under the immediate order of the court, as if such security were executor or administrator; but inasmuch as it would be inconvenient to creditors, and others interested in the estate, if there should be a double administration, the executor or administrator shall go on to discharge his trust, unless the court *revoke* his letters for some just cause, *as herein before directed*, and he shall be answerable for the property in the same manner as if it were not on his default as aforesaid delivered to the security, and he shall be entitled to sue the said security, in a special action on the case, grounded on this act, and recover damages, with double costs, in case he shall suffer from the misconduct of such security, in diminishing any part of the property, without obtaining an allowance for the same from the court; and the said security shall bring into court, to be deposited with the register of wills, the money arising from the sale of any property as aforesaid, to be applied according to the meaning of this act. *ibid. s.* 11.

Any executor or administrator shall be entitled to appoint a meeting of creditors, or of persons entitled to distributive shares of legacies, or a residue, on some day by the court approved, and passage of claims, payment or distribution, may be there made, under the court's direction and control. *ibid. s.* 12.

The governor, by and with the advice and consent of the council, shall have authority to appoint and commission three men of integrity and judgment in each county of the state, to be justices of the orphans' court in such county, for the purpose of taking the probat of wills, granting letters testamentary and of administration, directing the conduct and settling the accounts of executors and administrators,

securing the rights of legatees, superintending the distribution of the estates of intestates, securing the rights of orphans and legatees, and administering justice in all matters relative to the affairs of deceased persons, according to law, 1798, *No.* 101, *c.* 15, *s.* 1.

Form of the Commission.

The State of Maryland, to A. B. C. D. and E. F. of —— county, gentlemen, Greeting. Be it known, that reposing great trust and confidence in your judgement, integrity and love of justice, we hereby appoint you justices, and each of you a justice, of the orphans' court for —— county, to do equal right and justice, according to the law of this state, in every case in which you shall act under this commission, freely without sale, fully without denial, and speedily without delay; and you, or any two of you, are appointed and authorised to execute the powers of the said orphans' court, honestly and faithfully, according to law, until you shall be duly discharged from your said office. Given under the seal of the state of Maryland, this —— day of ——. Witness —— ——, chancellor.

Each of the persons named in such commission shall be entitled to hold and exercise his office until a new commission as aforesaid, in which his name shall not be included, shall be produced, and opened in court of which he is a justice. *ibid. s.* 3.

Every such commission, if the persons therein named, or any of them, shall qualify under it, shall be recorded in the offices of the registers of wills, amongst the proceedings of the orphans' courts whereof they are appointed justices. *ibid. s.* 4.

The justices of the orphans' court in each county, already commissioned and qualified, shall be and are hereby authorised, until a new commission shall be produced and opened as aforesaid, to hold their offices, and exercise the powers vested in orphans' courts by this act, or by any law which shall be in force after the operation of this act shall commence. *ibid. s.* 5.

Any person who shall qualify under such commission may also act under a commission as justice of the peace. *ibid. s.* 6.

But no person named in such commission to the orphans'

court shall be authorised to act as justice of the orphans' court, until he shall have repeated and subscribed a declaration of his belief in the christian religion, and taken, repeated and subscribed, the oath of allegiance prescribed by the constitution, and the oath of judge or justice prescribed by the act of February, seventeen hundred and seventy-seven, chapter five, and the oath of fidelity to the United States, prescribed by the act of Congress; and any person named in such commission may administer the said oaths to, and take the declaration aforesaid of, any other named in the commission, but it shall not be necessary for any person named in such commission, who has acted as a justice under the next preceding commission, to qualify on opening the new commission. *ibid. s. 7.*

The orphans' court shall be held in each county on the second Tuesday in every month of February, April, June, August, October and December, and oftener if need be, according to its own adjournment; and any one of the justices of the said court, in the absence of the others, shall have power to hold the said court, at a stated time of adjournment, *only for the purpose of adjourning;* any two of them shall have full power to do any act which the said court is or shall be authorised by law to perform, and any two of them shall have power to hold the court, on any day not named in an adjournment, on the application of any person having pressing business in the said court, provided notice thereof be given to all, and in such case the register shall record, that such notice hath been given. *ibid. s. 8.*

The register of wills in each county, already or hereafter to be appointed agreeable to the constitution, shall diligently attend each meeting of the orphans' court in his county, and under their direction make full and fair entries of their proceedings, and shall also make a fair record, in a strong bound book or books, of all wills proved before him, or the said court, or authenticated according to this act, and of all other matters by law directed to be recorded in the said court, or in his office; he shall make out and issue every summons, process or order of the court, and shall, in every respect, act under their control and direction, as the clerk of a court of law is under the direction of the said court of law; and he shall give out, and certify under the seal of the court, any copy of any part of the proceedings in the court, or in his office, which any person may demand; and he shall be entitled to a reward for any service by him done, according to the table of fees now or hereafter to be settled by law. *ibid. s. 9.*

The said register of wills shall attend on every Tuesday and Saturday at the town or place where the orphans' court is held, unless prevented by sickness, accident or necessity, for the dispatch of office business; he shall lodge every original paper and record by him made up in some repository of the court-house of the county, or in such other place of safety which the said court may appoint; the levy court of the county shall provide and keep in repair the said repository at the county's charge. *ibid. s.* 10.

Every person hereafter appointed register of wills, before he acts as such, shall, before the said court, or some judge or justice, qualify, by repeating and subscribing the declaration aforesaid, and taking, repeating and subscribing, the aforesaid oaths of allegiance and fidelity, and by taking, repeating and subscribing, the following oath of office. *ibid. s.* 11.

Form of the Oath.

I, A. B. do swear, (or solemnly, sincerely and truly affirm,) that I will diligently, honestly and faithfully, execute the office of register of wills in —— county, according to the best of my skill and judgement; so help me God.

The orphans' court in each county shall keep a seal for the said court, and for the office of register of wills; and each orphans' court that hath not already a seal, shall provide the same at the expence of the county, and the said seal shall be fixed to all certificates of the court, or of the register, and to every process and writ of every kind issued from the court. The orphans' court shall have full power, authority and jurisdiction to examine, hear and decree upon all accounts, claims and demands, existing between wards and their guardians, and between legatees, or persons entitled to any distributable part of an intestate's estate, and executors and administrators, and may enforce obedience to, and execution of, their decrees, in the same ample manner as the court of chancery may; and the court may, upon the application of an infant, or any person on his behalf, suggesting improper conduct in any guardian whatever, either in relation to the care and management of the property or person of any infant, inquire into the same, and at their discretion remove such guardian and make choice of another, who shall give security, and conduct himself in

the manner herein before prescribed, and shall receive the property and custody of the said ward. *ibid. s.* 12.

The orphans' court shall, in *all* cases, have power to issue a *summons* for any person concerned in the affairs of a deceased person, or for any witness or other person whose appearance in the said court, for *any* purpose, shall be deemed necessary or proper, and the said summons shall be returnable, at the discretion of the court, or as herein before directed; and if it be necessary or proper to enforce the appearance of the party, the court, on the return of "summoned," and failure to appear, may issue an *attachment;* and when the party shall appear, or be brought in thereon, may fine him or her, not exceeding thirty dollars; and if a witness before the court shall refuse to give evidence, the court may commit him or her to the custody of the sheriff of his or her county, or coroner, (if the case may require,) there to remain until he give evidence, or be discharged according to law; or the court may attach and sequester the party's estate, or a part thereof, as hereafter directed. *ibid. s.* 13.

Every sheriff and coroner, (as the case may require,) shall serve any summons or process to him directed by the orphans' court of *his or any other county within the state,* and shall make return thereof according to its tenor, and on failure, he shall be liable to be proceeded against by attachment and fine as aforesaid, or otherwise, as any other person may be proceeded against. *ibid. s.* 14.

In any case where two summonses shall be regularly returned *non est* by the sheriff, or other officer of the county where the party last resided, and it shall be necessary to proceed further to compel the party's attendance, the court may order and issue an attachment against his or her lands, tenements, goods and chattels, and on return of such attachment, to which a schedule of the property, (if any,) attached shall be annexed, the court, by order, or commission under seal, may authorise some person or persons to take into his care and custody the lands, tenements, goods and chattels, returned in the schedule, or any part thereof, and receive the profits thereof, to be accounted for, until the party shall appear and obey the order of the court, or until further order, and the sheriff, or other officer, shall deliver the property accordingly, or be liable to be proceeded against as aforesaid; provided, that the person or persons so authorised shall give bond to the state, with such security, and in such penalty, as the court shall direct, to be recorded, sued, and to be on a footing with an administration

bond, conditioned for rendering a true account of the said estate or property, and of the profits thereof, and to deliver the same according to the court's order, deducting such allowance for loss, and such commission, not exceeding five *per cent.* on the whole, as the court shall think proper to grant; and whenever the purpose for which the said property was sequestered shall have been answered, the court shall direct the said estate or property, and profits, (deducting as aforesaid,) to be restored to the party; and on the death of the party, the court shall order the same to be delivered to his or her heirs, devisees or legal representatives, as soon as the said purpose shall be answered, or immediately, on application, and satisfying the court of the party's right, in case the said purpose, after the death of the original party, cannot be answered. *ibid. s.* 15.

Whenever either of the *parties* having a contest in the orphans' court *shall require*, the said court may direct a plenary proceeding, by bill or petition, to which there shall be an answer, on oath, (or affirmation,) and if the party refuse to answer on oath, (or affirmation, as the case may require,) to any matter alledged in the bill or petition, and proper for the court to decide upon, the said party may be attached, fined and committed, or his property may be attached and sequestered, as aforesaid. *ibid. s.* 16.

And on such plenary proceeding all the depositions shall be taken in writing, and recorded; and in case either party shall require, the court shall direct an issue or issues to be made up, and sent to any court of law which may be most convenient, under all circumstances, for trying the same; and the said issue or issues shall be tried in the said court of law as soon as may be, without any continuance longer than is necessary to procure the attendance of a witness or witnesses; and the power of the court of law, and proceedings thereto relative, shall be as herein before directed respecting the trial of issues; and the orphans' court shall give judgement, or decree upon the bill and answer, or upon bill, answer, depositions, or finding of the jury; and in all cases of contest, the orphans' court may award costs to the party in their opinion entitled thereto, and may compel payment, by attachment of the body, and fine, or attachment and sequestration, as aforesaid, of the property. *ibid. s.* 17.

Any person who may conceive him or herself aggrieved by any judgment, decree, decision or order, of the orphans' court, shall have the liberty of appealing to the court of chancery, or to the general court of the shore whereon such

orphans' court is held, if the judgment, decree, decision or order, shall have been given or made on a summary proceeding, and on the testimony of witnesses, the party shall not be allowed to appeal, unless he or she shall immediately notify his intention, and request that the testimony be reduced to writing, and in such case the depositions shall be, at the cost of the party in the first instance, reduced to writing; and a transcript of the whole proceedings relating immediately to the matter, shall be made out by the register of wills, and certified by him under seal, and transmitted to the said appellate court by the party within thirty days from the date of the decision or order, the said party shall otherwise lose the privilege of appeal; and, if the decision of the orphans' court be in a summary way, and on papers filed in the court, no party shall be entitled to appeal, unless he or she enter the appeal within three days, and transmit a certified copy of the proceedings as aforesaid within thirty days aforesaid; but in case there shall have been plenary proceedings as aforesaid, either party may prosecute the appeal, by entering the same as aforesaid, and by transmitting a certified copy as aforesaid within sixty days from the date of the decree, judgment, decision or order, provided that this article shall not affect the case of appeal by this act before specially provided for; and in the said appellate court the appeal, so carried up, shall stand for hearing and decision at the term next succeeding the transmission of the proceedings, and the said court shall, at the said term, or as soon as conveniently may be, either affirm the decree, judgment, decision or order, of the court below, or direct in what manner it shall be changed or amended, and the decision of such appellate court shall be final and conclusive; and when the decision of such appellate court shall be certified, under the seal by the register or clerk of such court, and transmitted to the orphans' court, the said orphans' court shall proceed according to the tenor or directions thereof. *ibid. s.* 18.

An appeal from the orphans' court shall not stay any proceedings therein which may with propriety be carried on before the appeal is decided, provided the said orphans' court can provide for conforming to the decision of the court above, whether the said decision may eventually be for or against the appellant. *ibid. s.* 19.

The said orphans' court shall not, under pretext of incidental power, or constructive authority, exercise any jurisdiction whatever not expressly given by this act, or some other law; but every judgement, decree, decision or order,

of the said court, may be enforced by attachment and sequestration as aforesaid; and if the said judgement, decree, decision or order, be for paying money, the property sequestrated may, at the discretion of the court, be applied to the purpose for which such judgement, decree, decision or order, was given. *ibid. s.* 20.

Any person who may conceive him or herself aggrieved by a judgment, decree, decision or order, of the orphans' court, may appeal to the county court of the county where such judgment, decision or order, may be made, and that on such appeal the county court shall have the same power, jurisdiction and authority, that the general court or chancery court would have had on an appeal to either of those courts under the original act; provided nevertheless, that nothing herein contained shall be construed to affect the right of appeal from the orphans' court to the court of chancery or general court, as allowed by the act of 1798, No. 101. 1802, *c.* 101, *s.* 3.

The registers of wills in their respective counties, in the recess of the orphans' court, shall and they are hereby authorised and empowered to pass any account against the estate of any deceased person where the amount of such account or claim doth not exceed the sum of fifty dollars. *ibid. s.* 4.

In all cases where letters have issued, or hereafter may issue, to any person to collect and preserve the estate of a deceased person, it shall and may be lawful for such collector, after complying with the requisites prescribed by the said original act, to bring suits for the recovery of debts, or other property of the deceased, in the same manner as an executor or administrator might or could do, and that the property recovered or received by the collector shall be delivered to the person obtaining the letters testamentary or of administration, and in case of neglect or refusal, such collector may be proceeded against in the same manner as prescribed by said act; provided, that in case such letters shall be revoked, pending any such action, either by the express revocation of the court who issued the same, or by the granting of letters testamentary or of administration on the same estate, there shall be the same proceedings, and the executor or administrator, as the case may be, shall have the same authority and control over any such action, as in cases where the letters testamentary or of administration of any plantiff are or shall be revoked. *ibid. s.* 5.

If any letters testamentary or of administration shall be revoked by the orphans' court, and new letters granted,

pending any action at law or in equity against any person appointed an executor or administrator by such letters so revoked, there shall be the same proceedings in the action upon the suggestion of such revocation of the letters as is directed by the act of seventeen hundred and eighty-five, chapter eighty, in cases where the defendant shall have died pending such action, and in case there had been a judgement rendered previous to the revocation of the letters, a *scire facias* shall issue upon such judgement against the proper executor or administrator, suggesting the revocation of the letters of the former executor or administrator, and there shall be the same proceedings as in ordinary cases against executors and administrators, but if the letters testamentary or of administration of the plaintiff be revoked pending such action, or after judgement as aforesaid, there shall be the same proceedings as is provided by the fourth section of the fifth chapter of the act of 1798, No. 101. *ibid.* s. 6.

In case a judgement shall be obtained against any executor or administrator, made a defendant as aforesaid, and it shall not be found by the jury that such executor or administrator has assets sufficient to discharge the same, the plaintiff in such judgement may also issue a *scire facias* on such judgement against the executor or administrator whose letters have been revoked as aforesaid, suggesting that such executor or administrator, as the case may be, did receive assets of the deceased liable to such judgement, more than was paid over or delivered by such executor or administrator to the person or persons obtaining the said letters testamentary or of administration, and in case the same shall be controverted, it shall be ascertained and determined by a jury, in the same manner as in cases of *scire facias*, suggesting assets against the second executor or administrator; and in case of a verdict and judgement being given against such former executor or administrator, execution may issue thereon in the same manner as against other executors or administrators, and the plaintiff may also proceed against the securities in the same manner as against the securities of an executor or administrator whose letters have not been revoked. *ibid. s. 7.*

And, whereas compelling an executor or administrator to take notice of all judgements and decrees against the deceased is productive of great inconvenience, as well to the executor or administrator as to the other creditors, in as much as he cannot, with safety, pay off other debts, though

the said judgements or decrees may be fully discharged, unless such executor or administrator is in possession of the receipt or other legal evidence of the payment; and it appearing proper that such creditors, as to the manner and time of producing their claims, should be placed in the same situation as others, an executor or administrator shall not be bound to take notice of or discover any judgement or decree against his or her deceased, but such judgement or decree creditor shall exhibit his claim in the same manner as other creditors; and in case the same shall not be exhibited, such claim shall be barred in the same manner as if it rested on bond or simple contract; provided, that nothing herein contained shall extend, or be construed to extend, to deprive such creditor of the preference given by the original act, in cases where the claim is in due time exhibited. *ibid. s.* 8.

In no case shall the order made by the orphans' court, or by the register of wills, that an account or claim will pass when paid, be deemed of validity to establish such account or claim, but in case the executor or administrator thinks fit to contest the same, such account or claim shall derive no validity from the order aforesaid, but shall be proved in the same manner as if no such order had been made. *ibid. s.* 9.

In all cases where suits have been brought, and are now depending, against an executor or administrator, the same shall be proceeded on according to the provisions of this act; provided, that to enable such executor or administrator to plead such new matter or plea as this alteration of the law may require, and to support the same by evidence, it shall be lawful for the court before whom such suit may be depending to continue such suit until the end of the third term after the term to which such suit might have been continued before the passing of this act. *ibid. s.* 10.

And, whereas the personal property of deceased persons, who have died or shall die intestate, without leaving representatives within certain degrees of consanguinity by the acts of seventeen hundred and nineteen, chapter fourteen, and seventeen hundred and twenty-nine, chapter twenty-four, devolved on the free-schools of the county of the deceased, and in most of the counties the free-schools having been abolished, the executor or administrator of such deceased persons have retained the property to their own use and benefit; in all instances where by law the property of deceased persons would have descended or devolved on the free-schools of any county, if such free-schools had existed, the

same shall be, and it is hereby declared to be, the property of the college, if any, in such county, or if none, the property of any school to which the public aid by law has been or may be extended, and if none, to go to the county where the property of such person or persons so dying may lie; and that the trusteess of the college or school, or the justices of the levy court, respectively, as the case may be, shall have the same right, power and authority, to sue for and recover such property, as the visitors, trustees or governors, of any such free-school might or could have done; saving to the different schools in this state the rights which, by existing laws, they now respectively possess. *ibid. s.* 11.

[The following form of letters of Administration would more properly have come in some pages back; but it has been deemed more advisable to insert it here than to omit it entirely.]

Form of Letters of Administration.

MARYLAND, *ss.*

The State of Maryland, to all persons to whom these presents shall come greeting—Know ye that whereas *(A. B.)* late of —— county, deceased, died intestate, as it is said, leaving at his death personal property within the state aforesaid, wherefore administration of all the goods, chattels and credits of the deceased is hereby granted and committed unto *(C. D.)*

Witness, (J. S.) Esq. Chief Justice of the Orphans' Court of —— county, this —— day of —— ——.

Test, (G. M.) Register.

Form of Releafe to a Guardian.

Know all men by these presents, that *(A. B.)* of —— son and heir of *(C. B.)* deceased, hath remised, released, and for ever acquitted, and by these presents doth remise, release, and for ever quit claim unto *(B. F.)* of —— his guardian, all and all manner of action and actions, suits, reckonings, accounts, debts, dues, and demands whatsoever, which he the said *(A. B.)* ever had, now hath, or which he, his executors or administrators, at any time hereafter can or may have, claim or demand against the said *(B. F.)* his ex-

ecutors or administrators, for, or touching or concerning the management and disposition of any of the lands, tenements, or hereditaments of the said *(A. B.)* situate —— or any part thereof, or for or by reason of any part thereof, or for or by reason of any money, rents or profits by him received out of the same, or any payments made thereof during the minority of the said *(A. B.)* or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of the date hereof.——In witness whereof the said *(A. B.)* hath hereto set his hand and affixed his seal this —— day of ——:

Witness. A. B.
C. D.

AFFIRMATION.

The manner of administering an oath to any person ought to be such as those of the religious persuasion, profession or denomination of which such person is one, generally esteem the most effectual confirmation, by the attestation of the Divine Being. And that the people called Quakers, those called Tunkers, and those called Menonists, holding it unlawful to take an oath on any occasion, ought to be allowed to make their solemn affirmation in the manner that Quakers have been heretofore allowed to affirm, and to be of the same avail as an oath, in all such cases as the affirmation of Quakers hath been allowed and accepted within this state instead of an oath. And further, on such affirmation warrants to search for stolen goods, or the apprehension or commitment of offenders, ought to be granted, or security for the peace awarded; and Quakers, Tunkers or Menonists, ought also, on their solemn affirmation as aforesaid, to be admitted as witnesses in all criminal cases not capital.* *Declaration of Rights, Article* 36.

* *See* 1797, *ch.* 118, *(confirmed by* 1798, *ch.* 83,*) by which it is declared, that the people called Quakers, those called Nicolites, or New Quakers, those called Tunkers, and those called Menonists, holding it unlawful to take an oath on any occasion, shall be allowed to take their solemn affirmation as witnesses in the manner that Quakers have been heretofore allowed to affirm, which affirmation shall be of the same avail as an oath to all intents and purposes whatever.*

APPRENTICES.

THE justices of the several orphans' courts shall and may bind out orphan children (provided the increase or profits of their estates are not sufficient to maintain, support, and educate them) to some handicraftsman, mariner, manufacturer, mechanic, or other person, until (if a male) the age of 21 years, or (if a female) the age of sixteen years. The justices to use their discretion as to the person to whom they shall bind such orphans. And the justices, in all cases *where they can*, to bargain for the reasonable education of orphans so bound out in reading, writing and arithmetic, and for the teaching them some useful art or trade, and *in all cases* to contract for the *suitable maintaining* and *cloathing* of the orphans. And in like manner, and on like terms the said justices may bind out the following description of children, to wit: Such as are suffering through the extreme indigence or poverty of their parents; the children of beggars; illegitimate children, and the children of persons out of the state, where a sufficient sustenance is not afforded. If, however, the parents of a child so to be bound out reside within the county, they shall be summoned to appear before the justices, and the inclination of said parents *as far as is reasonable*, shall be consulted in the choice of the person to whom the child is to be bound out. But if, when any child is about to be bound out, any relation will enter into bond in the penalty of one hundred pounds for the due and comfortable maintenance and the providing sufficient and proper clothing as well as reasonable schooling and education for such child, the court shall not proceed to bind the child out. 1793, *c.* 45, *s.* 2.

At any time when the orphans' court of a county is not in session, any two justices of the peace for that county are empowered to bind out a child as an apprentice in the same manner as the orphans' court. 1794, *c.* 47, *s.* 1.

Form of an Indenture, for an Orphan, or other Child, bound out by two Justices of the Peace in the recess of the Orphans' Court.

We the subscribers, justices of the peace in and for —— county, by virtue of the act of assembly entitled "A sup-

plement to the act, entitled, an act for the better regulation of apprentices," have bound out and placed, and by these presents do bind out and place as an apprentice, with the consent of his mother, *(A. B.)* an orphan, (or illegitimate child) aged —— years on the —— of —— last, unto *(C. D. mason)* until he the said *(A. B.)* shall arrive to the age of 21 years, during which time he shall well and truly behave, conduct and demean himself in every respect as a good and faithful apprentice ought to do towards his said master; and the said master shall furnish and provide for his said apprentice good and sufficient meat, drink, clothes, washing, lodging and other requisite necessaries, during his apprenticeship; to cause him to be taught to read, write and cast up accounts, and also to teach him the art or trade of [*bricklaying and stone mason*] in the different branches thereof, and when free to give his said apprentice a suit of clothes worth £—— current money, or that sum in current money, as the said apprentice may choose. Witness our hands this —— day of —— ——.

J. S. Seal.
H. K. Seal.

To the Register of Wills for —— county.

Form of a Summons for the Parent.

—— County, To wit.

You are hereby commanded to summon *(A. B.)* to be and appear before us on the —— inst. to be consulted in the choice of the person to whom *(C. B.)* his son shall be bound, as far as may be reasonable, or otherwise comply with the act of assembly in such case provided—hereof fail not, and make return hereon on the day aforesaid. Witness our hands and seals this —— day of —— ——.

J. S. Seal.
P. M. Seal.

To J. M. Constable.

One or more justices of the peace may take the child of a beggar, or which is destitute of support, and place it in the care of a proper person until the next meeting of the orphans' court, when the said child may be bound out by the court. In such case the orphans' court has power to make a reasonable allowance to such person so taking care of the child; to be levied on and paid by the county to which the

child belongs, unless the person that had the care of the child, or some other person, will agree to take the child as an apprentice, and pay the expences so incurred by its maintenance. 1793, *c.* 45, *s.* 3.

A father may bind out his child as an apprentice, on reasonable terms, till of full age, to wit: boys to 21, and girls to 16 years of age. The terms of apprenticeship and the age of the child must be expressed in an indenture under the hand and seal of the father and master. The indenture to be lodged by the master with the register of the orphans' court of the county where the master resides, within 30 days after its execution, under the penalty of three pounds current money. *ibid. s.* 4.

The trustees of the poor of any county in the state, or any three of them, may bind out any poor child under their care in a poor-house, to any discreet person applying for such child, always giving a preference to tradesmen and mechanics. The trustees must bind the master by indenture to clothe and maintain such child, and to educate it in like manner as if bound out by the orphans' court. Said indenture to be lodged with the register as aforesaid, by one of the trustees, within 30 days as aforesaid, under the same penalty for neglect. *ibid. s.* 5.

It is lawful for any manufacturer or mechanic to take a male child as an apprentice until the age of 21 years. The contract between them to specify the age of the child at the time of making the contract. But, in such case, it is necessary for the parents of the said child (if living) or the orphans' court (if it be an orphan) to see the contract within two months after its execution, and endorse their approbation thereon. *ibid. s.* 6.

In case of a dispute between a master (or mistress) and an apprentice, the master (or mistress) may petition, in writing, to the justices of the county or criminal courts, who are authorised to determine in such cases. And the apprentice, in case of ill-usage, may, in like manner, petition to the same tribunal, and justice will be done accordingly. *ibid. s.* 7.

Any person that conceals, harbors, or in any way promotes or facilitates the running away of apprentices, is subject to the same fines and penalties as those are who harbor servants. *ibid. s.* 8. [*See Servants, &c.*]

Form of a Warrant for harboring Servants, Slaves and Apprentices.

MARYLAND, —— COUNTY, TO WIT.

Whereas complaint hath been made to me the subscriber, one of the justices of the peace in and for said county, by [*P. S.*] on oath, that [*C. S.*] hath harbored (or concealed,) or facilitated the running away of [*J. H.*] apprentice (or servant, or slave) of the said [*P. S.*] knowing him to be such, contrary to the act of assembly in such case made and provided, these are therefore to command you to take the said [*C. S.*] and bring him before me or some other justice of the peace for said county, to answer the premises, and further to be dealt with according to the acts of assembly entitled, an act relating to servants and slaves, and of an additional supplementary act to the act aforesaid. Witness my hand and seal, this —— day of —— ——.

J. S. Seal.

To F. H. Constable.

A judge or justice of the peace on good information or on their own observation of cruel or improper usage of an apprentice by a master or mistress, may compel them to enter into recognizance, with reasonable and proper security, to be forfeited in case they do not appear at the next county or criminal court, and answer and abide by the decision of the court on the complaint of the apprentice. In case such master or mistress shall not enter into recognizance, a judge or justice may take the apprentice away from his master or mistress and place him (or her) under the care of some other person, who shall be bound for the appearance of the apprentice before the said court, to abide its decision. *ibid. s.* 9.

Form of a Warrant against a Master or Mistress for cruel usage of an Apprentice.

MARYLAND, —— COUNTY, TO WIT.

Whereas information hath been made to me the subscriber, one of the justices of the peace in and for said county, by *(A. F.)* on oath, that *(A. B.)* apprentice to *(C. D. mason,)* hath been cruelly and improperly used by his said master, contrary to the act of assembly in such case provided: These are therefore to command you to take the said *(C. D. mason,)* and bring him before me, or some other

justice of the peace for said county, to answer the premises, and further to be dealt with according to the act of assembly, entitled "an act for the better regulation of apprentices." Witness my hand and seal, this —— day of —— ——.

J. S. Seal.

To J. B. Constable.

Form of a Recognizance in such case.

State of Maryland } MARYLAND, —— COUNTY, TO WIT.
vs. } On this —— day of —— ——, be-
C. S.——£20 } fore me one of the justices of the peace
H. S.——£20 } in and for said county, appears *(C. S.* and *H. S.)* and acknowledge themselves to owe and stand justly indebted to the state of Maryland in the sum of twenty pounds current money each, which they, and each of them yielded and granted should be made and levied off their respective goods and chattels, lands and tenements, for the use of the state of Maryland, upon condition nevertheless, that if the said *(C. S. mason,)* shall make his personal appearance at our next county court, before the justices thereof, to be held at the court-house in ——, in and for said county, on the —— Monday in —— next, and then and there answer what shall be alledged against him, and more particularly for cruel and improper usage to [*A. B.*] his apprentice, then this recognizance to be void and of none effect, otherwise of full force and virtue in law.

Witness my hand. J. S.

No master or mistress of an apprentice bound out within this state can send or carry his or her said apprentice out of the state. And a justice of the peace being informed or suspecting that they intend so to do, (except mariners) can compel them to enter into recognizance with reasonable and proper security for not removing such apprentices either directly or indirectly. If a master or mistress refuse to give such security, the justice may discharge the apprentice and provide another master. *ibid. s.* 11.

Form of a Warrant againſt a Maſter or Miſtreſs for carrying or ſending, or intending to carry his or her Apprentice out of the State.

MARYLAND, —— COUNTY, TO WIT.

Whereas information hath been made to me the subscri-

ber, one of the justices of the peace in and for said county, that [*P. S.*] master (or mistress) of [*J. H.*] his (or her) apprentice, intending to carry or remove the said apprentice out of the state of Maryland, contrary to the act of assembly in such case made and provided. You are hereby authorised and required to take the said [*P. S.*] and bring him before me or some other justice of the peace of the county aforesaid, to enter good security in a recognizance, to be forfeited in case the said (*P. S.*) shall carry or remove (*J. H.*) his (or her) apprentice out of the state aforesaid, contrary to the act of assembly entitled "an act for the better regulation of apprentices"—hereof fail not. Given under my hand and seal, this —— day of —— ——.

J. S. Seal.

To J. B. Constable.

Form of a Recognizance in such case.

State of Maryland } MARYLAND, —— COUNTY, TO WIT.
vs. } On this —— day of ——before me
P. S.——£50 } the subscriber, one of the justices of the
L. M.——£25 } peace in and for said county, appears [*P. S. blacksmith,*] and acknowledges himself to owe and stand justly indebted to the state of Maryland, in the sum of £50 current money; at the same time also appears before me (*L. H.*) and acknowledges himself to owe and stand justly indebted to the state aforesaid, in the sum of £25 like money, which they respectively yielded and granted should be made and levied off their goods and chattels, lands and tenements, for the use of the said state; upon condition nevertheless, that if the said [*P. S.*] shall not directly or indirectly remove or carry [*J. H.*] his apprentice out of the state of Maryland, contrary to "an act for the better regulation of apprentices," then this recognizance to be void and of none effect, if otherwise, to be and remain in full force and virtue in law.

Witness my hand. J. S.

Form of an Indenture where an Apprentice is bound out by his Father.

This indenture witnesseth, that (*A. B.*) hath put himself, and by these presents, by and with the consent of his parents,

doth voluntarily, and of his own free will and accord, put himself apprentice to *(C. D. sadler)* to learn his art, trade and mystery, and after the manner of an apprentice to serve *(him, the said C. D. his heirs and assigns)* from the day of the date hereof, for and during, and to the full end of *(seven years)* which term the said apprentice his said master faithfully shall serve, his secrets keep, his lawful commands every where readily obey. He shall do no damage to his said master, nor see it done by others, without telling or giving notice thereof to his master. He shall not contract matrimony within the said term. He shall not play at cards, dice, or any other unlawful game, whereby his said master may have damage. With his own goods, nor the goods of others, without licence from his said master, he shall neither buy nor sell. He shall not absent himself day nor night from his said master's service, without his leave: Nor haunt alehouses, taverns, or play-houses: But in all things behave himself as a faithful apprentice ought to do, during the said term. And the said master shall use the utmost of his endeavor to teach, or cause to be taught or instructed, the said apprentice in the trade or mystery of *(a sadler)* and procure and provide for him sufficient meat, drink *(wearing apparel)* lodging and washing fitting for an apprentice, during the term of [*seven years.*]

And for the performance of all and singular the covenants and agreements aforesaid, the said parties bind themselves each unto the other, firmly by these presents.

In witness whereof, the said parties have interchangeably set their hands and seals hereunto. Dated the [*third*] day of [*September*] Anno Domini one thousand [*eight*] hundred and *(four.)*

J. B. Seal.
C. D. Seal.

Subscribed and acknowledged before
(a justice of the peace.)

All apprentices, except those bound to tradesmen or mechanics residing in any town, shall be compelled to perform reasonable labor in wheat, rye and hay harvests only, unless the particular contract shall be otherwise. *ibid. s.* 13.

The widow of any master of any male apprentice, (bound agreeably to law, and whose time shall not have expired at the death of his master,) may assign the residue of such apprentice's term of servitude, with the approbation of the orphans' court, for such consideration as she may agree for,

to some other person of the same trade with the first master; and the new master and the apprentice shall be bound to perform the residue of the contract, as if the new master had been an original party thereto: And the consideration which the widow receives for the apprentice's time, shall be to her own use exclusively. A widow may keep a female apprentice after the death of her husband if she thinks proper. But if a widow wishes not to keep a female apprentice, she must carry such apprentice to the orphans' court of the county and deliver her up, when she shall be again bound out. *ibid. s.* 14.

Every apprentice, after the death of his master, must remain with the widow, and be subject to her control and directions until the county or criminal court or justice of the peace take some order therein, who have the power and authority to continue an apprentice with the widow, so long as they shall be satisfied that the widow has it in her power and does fulfill the contract made with her husband. Whoever harbors an apprentice that leaves the widow of his own accord, on the death of his master, is subject to the same penalties as those are who harbor sevants. *ibid. s.* 16.

ARREST.

If any person be arrested upon a *capias ad respondendum*, contrary to the 11th section of the Act of Assembly of 1801, chapter 74, *(see page 39 of this book)* the plaintiff in the said action shall suffer a nonsuit, and pay the defendant his or her reasonable costs and charges, to be adjudged him or her by the court from whence such process issued; and if any person be taken in execution contrary to the directions hereof, the court from whence such execution issued shall discharge him or her from imprisonment; provided always, that nothing herein contained shall extend to the benefit or advantage of any person who shall abscond from justice in the county where they live, but that such persons may be arrested in any county wherever they may be found. 1801, c. 74, *s.* 12.

An *arrest* is the apprehending or restraining of one's person, in order to be forthcoming to answer an alledged or suspected crime. To this arrest all persons whatsoever are, without distinction, equally liable in all criminal cases: but

no man is to be arrested, unless charged with such a crime, as will at least justify holding him to bail, when taken. And, in general, an arrest may be made four ways: 1. By warrant: 2. By an officer without warrant: 3. By a private person also without warrant: 4. By an hue and cry.

A warrant may be granted in extraordinary cases by the privy council, or secretaries of state; but ordinarily by justices of the peace. This they may do in any case where they have a jurisdiction over the offence; in order to compel the person accused to appear before them: for it would be absurd to give them power to examine an offender, unless they had also a power to compel him to attend, and to submit to such examination. And this extends undoubtedly to all treasons, felonies and breaches of the peace; and also to all such offences as they have power to punish by statute. Sir Edward Coke indeed hath laid it down, that a justice of the peace cannot issue a warrant to apprehend a felon upon bare suspicion; no, not even till an indictment be actually found: and the contrary practice is by others held to be grounded rather upon connivance, than the express rule of law; though now by long custom established. A doctrine which would in most cases give a loose to felons to escape without punishment; and therefore Sir Mathew Hale hath combated it with invincible authority, and strength of reason: maintaining, 1. That a justice of the peace hath power to issue a warrant to apprehend a *person* accused of felony, though not yet *indicted*; and, 2. That he may also issue a warrant to apprehend a person *suspected* of felony, though the original suspicion be not in himself, but in the party that prays his warrant; because he is a competent judge of the probability offered to him of suspicion. But in both cases it is fitting to examine upon oath the party requiring a warrant, as well to ascertain that there *is* a felony or other crime actually committed, without which no warrant should be granted; as also to *prove* the cause and probability of suspecting the party, against whom the warrant is prayed. This warrant ought to be under the hand and seal of the justice, should set forth the time and place of making, and the cause for which it is made, and should be directed to the constable, or other peace officer, (or, it may be, to any private person by name) requiring him to bring the party either generally before *any* justice of the peace for the county, or only before the justice who granted it; the warrant in the latter case being called a *special* warrant. A *general* warrant to apprehend all persons suspected, without naming

or particularly describing any person in special, is illegal and void for its uncertainty; and a warrant to apprehend all persons, guilty of a crime therein specified, is no legal warrant.

Arrests by officers, *without warrant*, may be executed, 1. By a justice of the peace, who may himself apprehend, or cause to be apprehended, by word only, any person committing a felony or breach of the peace in his presence. 2. The Sheriff, and 3. The coroner may apprehend any felon within the county without warrant. 4. The constable may, without a warrant, arrest any one for a breach of the peace in his view, and carry him before a justice of the peace. Watchmen may arrest all offenders, and particularly night-walkers, and commit them to custody till the morning.

Any private person that is present when any felony is committed, is bound by law to arrest the felon; and they may justify breaking open doors upon following such felon; and if they kill him, provided he cannot be otherwise taken, it is justifiable; though if they are killed in endeavoring to make such arrest, it is murder.

The fourth species of arrest is by hue and cry, which may be raised either by a precept of a justice of the peace, or by a peace officer, or by any private man that knows of a felony.

In actions of debt and the like, an arrest must be by corporal seizure or touching the defendant's body; after which the bailiff may justify breaking open the house in which he is, to take him: Otherwise he has no such power; but must watch his opportunity to arrest him.

Clergymen performing divine service, clerks and attorneys, and all other persons belonging to courts of justice, are for the time privileged from arrests. Suitors, witnesses, and other persons, necessarily attending any courts of record upon business, are not to be arrested during their actual attendance, which includes their necessary coming and returning.

No arrest can be made, nor process served upon a Sunday, except for treason, felony, or breach of the peace. *Blackstone's Commentaries.*

The house of Delegates of the State of Maryland, may punish, by imprisonment, any person who shall be guilty of a breach of privilege, by arresting on civil process any of their members during their sitting, or on their way to, or returning from, the house. *Constitution, art.* 12.

The Senate may exercise the same power in similar cases. *ibid.*

No officer or private in the militia is subject to an arrest, either on mesne process or execution, or in any other manner, for any civil matter, in his attendance at, going to, or returning from, muster. 1793, *c.* 53, *s.* 24.

ARSON.

Arson is the malicious and wilful burning of the house or out-house of another man. Not only the bare dwelling house, but all out-houses that are parcel thereof, though not contiguous thereto, nor under the same roof, as barns and stables, may be the subject of arson. The offence of arson (strictly so called) may be committed by willingly setting fire to one's own house, provided one's neighbor's house is thereby also burnt; but if no mischief is done but to one's own, it does not amount to felony, though the fire was kindled with intent to burn another's. However, such wilful firing one's own house, *in a town*, is a high misdemeanor, and punishable by fine, imprisonment, pillory, and perpetual sureties for the good behavior. If a landlord or reversioner sets fire to his own house, of which another is in possession under a lease from himself or from those whose estate he hath, it shall be acounted arson; for during the lease, the house is the property of the tenant.

A bare attempt or intent to burn, by actually setting fire to an house, unless it absolutely *burns*, does not fall within the description of arson. But the burning or consuming of any part is sufficient; though the fire be afterwards extinguished. It must also be a *malicious* burning; otherwise it is only a trespass; and therefore no negligence or mischance amounts to it. *Blackstone's Commentaries.*

Any person or persons whatever that shall be convicted of wilfully burning any court-house within the State of Maryland, wherein any records actually or usually are kept, shall have judgement to suffer death. 1720, *c.* 25, *s.* 2.

Any slave who shall attempt to burn any dwelling-house, or out-house contiguous to, or used with, any dwelling-house, or any other house wherein there shall be any person or persons, or any goods, merchandise, tobacco, Indian corn or other grain or fodder, and shall be

thereof convicted, shall suffer death as a felon. 1751, *c.* 14, *s.* 3.

A negro or other slave being convicted of willingly burning dwelling-houses, are liable to have the right hand cut off, to be hanged in the usual manner, the head severed from the body, the body divided into four quarters, and head and quarters set up in the most public places of the county where such fact was committed. 1729, *c.* 4. *s.* 2.

By act of assembly, 1793, *c.* 57, *s.* 13, the justices of Baltimore county court are allowed to pass sentence of death only upon a slave guilty of arson, or may, in their discretion, adjudge such slave to labor on the public road for any term not exceeding fourteen years, in lieu thereof.

Any person or persons who shall be convicted of wilfully burning any tobacco-house or houses, having therein any tobacco hanging or in bulk, or packed, and every aider and abettor of such offender, shall suffer death as a felon. 1744, *c.* 5, *s.* 3.

Any person or persons who shall wilfully, maliciously, and designedly burn any ship or other vessel, sloop, shallop, or boat, of seventeen feet keel or upwards, whether laden or empty, and the aiders or abettors of such offender or offenders, being thereof convicted, shall suffer death as a felon or felons. 1744, *c* 20, *s.* 2.

Form of a Warrant for apprehending a perſon ſuſpected of Arſon.

Maryland, —— County, To Wit:

Whereas *(A. B.)* of said county hath this day made information and complaint on oath, before me *(J. S.)* one of the justices of the peace in and for said county, that on last night his *(stable)* was set on fire, and entirely consumed, and that he hath just cause to suspect, and doth suspect that *(negro Joe, a slave, the property of M. F. of said county)* the same offence wantonly and maliciously did commit. You are therefore hereby authorised and commanded forthwith to apprehend the said *(negro Joe)*, and bring him before me or some other justice of the peace in and for said county, to answer unto the said information and complaint, and further to be dealt with according to law. Hereof fail not. Given under my hand and seal, this —— day of ——, ——. J. S. Seal,

To J. B. Constable.

[*For further proceedings see Recognizances.*]

ARTICLES OF AGREEMENT.

An agreement is the mutual consent of parties, or joining together of two or more minds, in any thing done or to be done.

An agreement without satisfaction is as nothing; and a *forced* agreement of the party is accounted no agreement.

Articles of agreement are used for ascertaining what is mutually agreed upon by the parties thereto either in respect to the sale of property, performance of work, service, or any other thing contracted to be done, in consideration of money, wares, or other things.

Form of Articles of Agreement.

Articles of Agreement, made, concluded, and agreed upon, this —— day of ——, ——, between (A. R) of —— County, in the State of Maryland, of the one part, and (W. C.) of the same place, of the other part, as follows, to wit:

The said *(W. C.)* for the consideration hereinafter mentioned, doth, for himself, his executors and administrators, covenant, promise and agree, to and with the said *(A. R.)* his executors, administrators and assigns, that he the said *(W. C.)* shall and will, within the space of two Callender months, next after the date hereof, in good and workman-like manner, and according to the best of his art and skill, erect, set up and finish, two hundred pannels of post and rail fencing at the farm of the said *(A. R.)* of the description following, to wit: The posts to be at least four feet six inches in height, from the upper to the lower edges of the mortised holes, and at least two feet in the ground; six holes in each post, the holes to be of five inches in length, and two in width, and headed down or squared; the top of the post to be rounded off and made smooth, and the rails to be ten feet six inches between the posts, and well lapped and tightly fitted in the mortised holes, and the top of the posts to be at least six inches above the top rail, and six rails to each pannel, and to erect, set up and finish the same, of such materials as the said *(A. R.)* or his assigns shall provide and furnish for the same. In consideration whereof, the said *(A. R.)* doth, for himself, his executors and administrators, covenant and promise, to and with the said *(W. C.)* his executors, administrators and assigns, well and truly to pay, or

cause to be paid unto the said *(W. C.)* his executors, administrators and assigns, the sum of fifty dollars, current money, in manner following, to wit: Twenty dollars in part thereof, when he shall have erected and set up one hundred pannels as aforesaid, and thirty dollars the remainder in full, when the same shall be completely finished. And also, that he the said *(A. R.)* or his assigns, shall and will, provide and furnish the said *(W. C.)* with good and sufficient meat, drink, washing, lodging, and other requisites necessary, while employed as aforesaid. For the true and faithful performance of the covenants and agreements aforesaid, the parties bind themselves each unto the other, in the sum of one hundred pounds current money, by these presents. In witness whereof, they have hereunto *interchangeably** set their hands and affixed their seals the —— day of —— and year first above written.

Signed, sealed and delivered in presence of } A. R. Seal. W. C. Seal.

** When this word is used it shews that there ought to be two draughts executed, to wit: One for each party.*

A General Form of Articles of Agreement.

Articles of Agreement, made, concluded, and agreed upon, this —— day of ——, ——, between, (J. D.) of —— County, in the State of Maryland, of the one part, and (R. F.) of the same place, of the other part, as follows, to wit:

The said *(J. D.)* for the consideration hereafter mentioned, hath agreed, and doth hereby covenant and agree *(here insert what J. D. is to observe, perform or do on his part,)* and the said *(R. F.)* on his part doth hereby covenant and agree, that *(here insert the considerations to be given by R. F. on his part)*.

For the true and faithful performance of the foregoing covenants and agreements, the said parties do hereby respectively bind themselves and their respective heirs, executors and administrators, each to the other, his executors and administrators, in the sum of one hundred and fifty pounds current money of Maryland. In witness

whereof, they have hereunto set their hands and affixed their seals, the day and year before written.

Signed, and sealed in presence of } J. D. Seal. R. F. Seal.

J. J.
R. P.

[*Instruments like the above ought to be left in the hands of one of the subscribing witnesses for safe keeping, until called for by the parties.*]

ASSAULT AND BATTERY.

Assault is an attempt or offer to beat another, without touching him; as if one lifts up his cane or his fist, in a threatening manner at another; or strikes at him but misses him: This is an assault, described to be "an unlawful setting upon one's person." It is a violence amounting considerably higher than bare threats; and therefore, though no actual suffering is proved, yet the party injured may have redress by action of *trepass vi et armis;* wherein he shall recover damages for the injury. *Blackstone's Commentaries, p.* 120, *vol.* 3.

Battery is the unlawful beating of another. The least touching of another's person wilfully, or in anger is a battery; for the law cannot draw the line between different degrees of violence, and therefore totally prohibits the first and lowest stage of it; every man's person being sacred, and no other having a right to meddle with it, in any the slightest manner. But battery is, in some cases, justifiable or lawful; as where one who hath authority, a parent or master, gives moderate correction to his child, his scholar, or his apprentice. So also on the principle of self-defence; for if one strikes me first, or even only assaults me, I may strike in my own defence; and, if sued for it, may plead that it was the plaintiff's own original assault that occasioned it. So likewise in defence of my goods or possessions, if a man endeavors to deprive me of them, I may justify laying hands upon him to prevent him; and in case he persists with violence, I may proceed to beat him away. Thus too in the exercise of an office, as that of churchwarden or beadle, a man may lay hands upon another to

turn him out of church, and prevent his disturbing the congregation : And if sued for this or the like battery, he may set forth the whole case, and plead that he laid hands upon him gently for this purpose. On account of these causes of justification, battery is defined to be the *unlawful* beating of another, for which the remedy is, as for assault, by action of trespass, *vi et armis ;* wherein the jury will give adequate damages. *ibid. p.* 120, 121, *vol.* 3.

It may be proper here to draw the distinction between an *assault* and an *affray*. The latter is (according to Blackstone) the fighting of two or more persons in some *public* place, to the terror of the people of the state : If the fighting be in *private* it is *no affray*, but an *assault*. Affrays may be suppressed by any private person present, who is justifiable in parting the combatants, whatever consequence may ensue. But this is more particularly the duty of the constable or other similar officer.

The house of delegates of the State of Maryland may punish, by imprisonment, any person who shall be guilty of a breach of privilege, by assaulting any of their members during their sitting, or on their way to, or return from, the house, or by assaulting or obstructing their officers, or a witness, or any other person attending on, or on their way to or from, the house. *Constitution, article* 12.

The Senate of Maryland may exercise the same power on similar occasions. *ibid.*

Actions of assault and battery must be brought within one year from the time of the cause of such action accruing, and not after. 1715, *c.* 23, *s.* 2.

Magistrates or other persons executing the law to punish blasphemers, if assaulted, shall recover treble damages. 1723, *c.* 16. *s.* 8.

No action of trespass for injury done to the person can be brought in the General Court, unless the damages assessed exceed four hundred dollars. 1801, *c.* 74, *s.* 35.

For any battery or assault hereafer committed on the person of any officer in or for the lawful execution of his office, or on the person of any other assisting him therein, such officer or person, on a suit in the general court of the shore where the offence was committed, if the damages assessed shall be five pounds or upwards, shall recover the damages assessed and also double costs. 1787, *c.* 39, *s.* 3.

If a person comes into my house, and will not go out, I may justify laying hold of him and turning him out.

One charged with assault and battery, may be found guilty of the assault, and yet acquitted of the battery. But every battery includes an assault.

No words whatever can amount to an assault.

Form of a Warrant to apprehend a person for Assault and Battery.

MARYLAND, —— COUNTY, TO WIT:

Whereas, *(A. B.)* of said county, hath this day made information and complaint, on oath, to me *(J. S.)* one of the justices of the peace of the State of Maryland, in and for the County aforesaid, that on the —— day of the present month, at the house *(or other place)* of ——, he was assaulted and cruelly beaten by *(C. D.)* of said County, and that the said *(C. D.)* hath threatened that he would do him some further personal injury, insomuch, that he *(A. B.)* is afraid that *(C. D.)* will beat, *(wound, maim or kill)* him; that he the said *(A. B.)* craves the surety of the peace, not for hatred, malice, or ill will, but for his own personal safety from harm.

You are therefore hereby authorised and commanded, forthwith, to apprehend the said *(C. D.)* and bring him before me or some other justice of the peace of said County, to enter security for his personal appearance at our next County Court, to answer the complaint aforesaid. And also, to keep the peace generally towards the citizens of the State of Maryland, and more especially towards the said *(A. B.)* for the space of one year. Hereof fail not. Witness my hand and seal, the —— day of ——.

J. S. Seal.

To J. B. Constable.

Form of Recognizance to appear at Court and keep the Peace.

State of Maryland against C. D. £50, G. M. £25, H. W. £25 } MARYLAND —— COUNTY, TO WIT. On this —— day of ——, ——, before me the subscriber, one of the justices of the peace for the State and of the county aforesaid, appears *(C. D.)* and acknowledges himself to owe, and stand just-

ly indebted to the State of Maryland in the sum of £50 currency: At same time also appeared before me *(G. M.)* and *(H. W.)* and acknowledge themselves to owe and stand justly indebted to the State aforesaid, in the sum of £25 currency, each; which they respectively yielded and granted should be levied and made of their several goods and chattels, lands and tenements, for the use of the State of Maryland: Upon condition, nevertheless, that if the said *(C. D.)* shall make his personal appearance at our next county court, before the justices thereof, held at the court-house in ——, in and for said county, on the —— next, and then and there answer what shall be alledged against him, for assaulting and beating *(A. B.)* of —— county, contrary to the peace and government of the State of Maryland; and shall not depart the said court, but attend the same from day to day, until he shall have first obtained leave thereof; and the said *(C. D.)* shall also keep the peace generally, and more especially towards *(A. B.)* aforesaid, for the time of one year next ensuing the date hereof; then this recognizance to be void and of none effect, otherwise of full force and virtue in law.

Witness my hand.

J. S.

ASSIGNMENT.

Where any surety to a bond, or other obligation, or endorser of a bill of exchange that shall be protested, shall discharge or tender the sum due thereon, the obligee or endorser shall assign to him such obligation or protested bill, and the assignee shall then have action in his own name against the principal debtor. 1763, *c.* 23, *s.* 7.

Bonds or other obligations under seal, being assigned under seal, the assignee may maintain action in his own name against the obligor. *ibid. s.* 8.

If such obligor shall be unable to pay, or cannot be found, &c. so that the assignee cannot recover, the like action shall be maintainable against the obligee, (in case the assignor was not a surety,) unless such debt be lost by default of the assignee, in which case the assignor shall not be liable. *ibid. s.* 9.

No action shall be maintainable in the name of any assignee, unless oath or affirmation be made by the assign-

or, that he hath received no part of the sum mentioned in the obligation, or such part only as is mentioned in such oath, &c. to be endorsed on the bond. *ibid. s.* 10.

Where judgement is recovered against debtor and surety, and satisfied by the surety, the creditor shall assign such judgement to the surety, and the assignee shall then have, in his own name, as assignee, the same execution against the principal debtor as the creditor might have had. *ibid. s.* 8.

The assignment must be first recorded in the court where the judgement was obtained.

The chancellor can direct an assignment of bonds for mortgaged property sold to be made to the mortgagee, on which he may maintain action. 1785, *c.* 72, *s.* 9.

Where judgement is rendered against several sureties, and one of them satisfies the whole, he shall have assignment of the judgement from the creditor, and be entitled to execution against the other sureties for a proportionable part of the debt or damage paid by him. *ibid. s.* 8.

Any person trading to the state of Maryland, who shall reside out of the state at the time of executing or making an assignment, such assignment will be of no force in this state, either in law or in equity, until the person or persons to whom such assignment shall be made or executed, or his or their agents or attorneys, shall give bond with security to be approved by the chancellor, to pay and satisfy all and every debt and debts which such person or persons making or executing such assignment, shall or may owe at the time of entering into such bond or obligation, to all and every person and persons living or residing within the state, so far forth as the goods, chattels, effects, debts, lands, tenements or hereditaments, shall come to the hands or possession of such agent, attorney, or other person acting as such. 1753, *c.* 36, *s.* 1.

Such bond or obligation must be lodged with the register of the court of Chancery.

Form of an Assignment.

I do hereby assign, transfer and set over unto *(C. D.)* his executors, administrators or assigns, all my right, title, claim, interest and demand of, in and unto the within *(or above, or prefixed)* bond, and the condition thereof, *(or note, or other writing promissory)* for value received.

As witness my hand and seal, this —— day of ——, ——.

Test. A. B. Seal.
J. S.

Form of the Oath to be endorsed thereon.

MARYLAND, —— COUNTY, TO WIT.

On this —— day of ——, ——, before me the subscribing witness to the foregoing assignment, and being one of the justices of the peace in and for said county, appears *(A. B.)* and makes oath on the Holy Evangely of Almighty God, that he hath received no part of the sum mentioned in the within *(above or prefixed)* bond, or the condition thereof, *(or note, &c.)* Witness my hand.

J. S.

If however any part had previously been paid on such writing, you will go on and say—"*except the sum of —— currency, on the —— last past.*"

False swearing in the above is punished as wilful perjury. 1763, *c.* 23, *s.* 11.

Form of a common Assignment on Note, or other Writing.

For value received, I do hereby assign, transfer and set over unto *(C. D.)* his executors, administrators or assigns, all my right, title, claim, interest and demand of, in and unto the within *(bond, note, or other instrument of writing)*. As witness my hand and seal, this —— day of ——.

Test. A. B. Seal.
E. F.

Form of an Assignment where the Assignor is liable.

For a valuable consideration, I do hereby assign, transfer and set over unto *(C. D.)* his executors, administrators or assigns, all my right, title, claim, interest and de-

mand of, in and unto the within bond *(note or other writing)* and do hereby agree, in case the same shall not be recovered of the obligor, *(or promissor)* in two years next —— following the date hereof, to pay the same, together with the proper costs that may have accrued thereon, unto the said *(C. D.)* his executors, administrators or assigns. In witness whereof I have hereunto set my hand and affixed my seal, this ——day of ——, ——.

A. B. Seal.

In presence of us.

E. F.
G. H.

No assignment of any bond, &c. to any person entitled to sue by attachment of privilege, shall enable such person to sue by such attachment, but the said assignee shall have the same remedy as persons not entitled to sue by such attachment, and no other. 1799, *c.* 29.

The assignment of a judgement by a creditor to a surety satisfying the same, cannot debar the defendant of his remedy by *audita querela*, or other equitable course of proceeding. 1763, *c.* 23, *s.* 8.

Form of Assignment of an Apprentice by a Widow.

Know all men by these presents,

That I *(E. F.)* widow and relict of *(N. F.)* late of —— county, deceased, for and in consideration of the sum of £30 currency, to me in hand paid by *(P. H.)* of said county *(he having and using the same occupation of my late husband)* have assigned and set over, and do by these presents, assign and set over unto the said *(P. H.)* *(J. M.)* apprentice of the said *(N. F.)* deceased, as far as I can or may claim the said apprentice, by virtue of "An Act for the better regulation of apprentices." He the said *(P. H.)* to comply with the residue of the contract entered into by my late husband. In witness whereof, I have hereunto set my hand and seal, the —— day of ——, ——.

E. F. Seal.

Witness present,

G. B.

ATTACHMENTS.

No attachment shall issue from any court against a defendant residing in the state, before two successive writs against him have been returned *non est*. 1715, *c.* 40, *s* 2.

If the defendant is absent out of the state, then one writ being returned *non est*, and the plaintiff leaving a copy of his declaration, or short note, expressing the cause of action, with the defendant's attorney, (if he hath one,) or at the defendant's late dwelling-house, and making such proof of his action as the court shall think fit, the court shall award an attachment against the goods, chattels and credits, of such absent defendant, so prosecuted and not appearing, which may be laid on such goods, &c. in the plaintiff's own hands, or those of any other person. *ibid. s* 3.

In such attachment shall be a clause, commanding the sheriff to make known, at the time of the execution, to the person in whose hands the goods, &c. so attached are, to appear on the return of the attachment to the court, to shew cause why such goods, &c. should not be condemned. *ibid.*

If the defendant shall not then appear, nor the garnishee aforesaid, the goods, &c. shall be condemned, and execution awarded as in other judgements. *ibid.*

The plaintiff, giving security in court for the use of the defendant to make restitution of the same, or the value, such defendant shall, within a year and a day from the awarding the attachment, by himself or attorney, appear to the original action, and prove payment, or otherwise in court discount or bar the plaintiff of the whole or part. *ibid.*

Such condemnation and execution of the goods, &c. shall be pleadable in bar by the garnishee in any action brought by the said defendant for the same. *ibid.*

[*See pages* 21, 29 *and* 30, *of this book.*]

ATTORNIES.

An attorney at law is one who is put in the place, stead or turn of another, to manage his matters of law. Formerly every suitor was obliged to appear in person, to

prosecute or defend his suit. This is still the law in criminal cases. And an idiot cannot to this day appear by attorney, but in person; for he hath not discretion to enable him to appoint a proper substitute. And upon his being brought before the court in so defenceless a condition, the judges are bound to take care of his interests, and they shall admit the best plea in his behalf that any one present can suggest. Attornies are now formed into regular corps; and are in all points officers of the respective courts in which they are admitted. *Blackstone's Commentaries, p.* 28, *vol.* 3.

No person shall practise the law in any court of Maryland without being admitted by the justices thereof, who have power to admit, and also to suspend them. 1715 *c.* 48, *s.* 12.

No justice of the peace, sheriff, deputy-sheriff, clerk or deputy-clerk, shall plead as an attorney in the court wherein he bears office. 1715, *c.* 41, *s.* 9.

No chief justice, associate justice of a county court, or register of wills, shall act as an attorney or solicitor in any court of law or equity while he acts as a justice. 1801, *c.* 74, *s.* 7.

Justices of the orphans' court cannot act as attornies or solicitors. 1791, *c.* 76, *s.* 3.

The judges of courts are authorised to observe the demeanor of practitioners of the law before them, and to discountenance and punish liberties tending to lessen the authority of the courts, by suspension perpetually, or for a time, or by fine. 1719, *c.* 4, *s.* 2.

To every attorney in a county court, for bringing, prosecuting or defending, any action to final judgement, agreement, or other end thereof, shall be paid 100 lbs. of tobacco, except where the debt or damage recovered be upwards of 2000lbs. of tobacco, or £10 sterling, in which case he shall have 200lbs. of tobacco. 1715, *c.* 48, *s.* 7.

For prosecuting or defending any cause, plaint or action, in the general court, to final judgement, 400lbs. of tobacco. *ibid.*

For any fee in the chancery court, 600lbs. of tobacco. *ibid.*

For any fee upon writs of error or appeal, 600lbs. of tobacco. *ibid.*

Any practitioner demanding or receiving more than by law appointed, shall be incapable of practising the law in any court in this state for the future. *ibid. s.* 8.

Attornies fees, by law, are levyable by execution as other officers fees, and the sheriffs are obliged to levy and execute for the same accordingly. *ibid. s.* 10.

All bills, bonds, or other specialties, taken by an attorney, shall be endorsed for what or how they became due, or in default thereof shall be void. *ibid. s.* 9.

Attornies fees, in cases of equity before the county courts, to be the same as in other actions therein, substituting 2500 lbs. tobacco, for 2000lbs. as to the sum recovered. 1763, *c.* 23, *s.* 12.

No attorney shall charge or take more than one fee on any bond, although there may be one or more sureties, for suing or bringing the same to judgement, &c. or defence of the same action. 1747, *c.* 23, *s.* 6.

Attornies practising in any county court are liable to actions in that county as if they were inhabitants thereof. 1722, *c.* 12, *s.* 4.

Where actions are discontinued, through the default of an attorney, he may be fined 5000lbs. tobacco if the general, and 2000lbs. if in the county court, and all the costs of the suit discontinued. 1721, *c.* 14, *s.* 2.

Where attornies neglect their client's cause, the county courts, (when the lawful costs, accruing by such negligence, do not exceed 400lbs. of tobacco.) are empowered to adjudge the attorney to pay the same, but if above 400lbs. of tobacco, the client shall be left to his remedy at common law. 1722, *c.* 12, *s.* 4.

In suits, for any thing done in pursuance of the act for the relief of the poor within the several counties therein mentioned, the defendant, on verdict, nonsuit or discontinuance, shall recover treble costs, for which the attorney is liable, unless security is given by the plaintiff. 1768, *c.* 29, *s.* 24.

On petition for freedom hereafter instituted, when they shall be dismissed, or on trial judgement be rendered against the petitioner, the attorney shall pay all legal costs unless the court shall be of opinion, under all circumstances, that there was probable ground to suppose the said petitioner had a right to freedom. 1796, *c.* 67, *s.* 25.

No appeal, &c. from the judgement of a county court, shall be allowed to any attorney on a suit or prosecution for issuing criminal process, without a presentment of the grand jury, or order of the court. 1715, *c.* 48, *s.* 2.

Attornies, before entering on practice, must take an oath. 1777, *c.* 5, *s.* 1.

Form of an Oath to be taken by an Attorney, on his admission to plead.

I, (*O. L.*) do solemnly promise and swear, that I will well and truly behave and demean myself in the office of an attorney of —— county, in all things appertaining to the duties thereof, according to the best of my skill and judgement.

So help me God.

AWARD.

An *award* is a decision by arbitrators, concerning personal chattels or personal wrongs. And thereby the question is as fully determined, and the right transferred or settled, as it could have been by the agreement of the parties or the judgement of a court of justice. *Blackstone's Commentaries, p.* 16, *vol.* 3.

If any cause instituted in any of the courts of Maryland, shall, by rule of court, and by the consent and agreement of the parties thereto, be submitted and referred to the award and arbitrament of any person or persons, it is lawful for such court to give judgement upon the award of the person or persons to whom such submission and reference shall be made, as of the court to which such award shall be returned, and to award execution thereon, in the same manner as they might do upon verdict, confession, or nonsuit, and that such judgement shall have the same effect to every intent and purpose, as any judgement upon verdict or confession would have. 1778, *c.* 21, *s.* 8.

Such award shall remain seven days in the general court during their sitting, (if returned to the general court), or four days in the respective county courts, during their sitting, (if returned to any county court), after the return thereof, before any such judgement shall be entered up; and if it shall appear to the justices of the court to which any such award shall be returned, within the respective times aforesaid, that the same was obtained by fraud or malpractice in or by surprize, imposition, or deception of the arbitrators, or without due notice to the parties or their attornies, it is lawful for the said court to set aside

such award, and refuse to give judgement thereon. *ibid. s.* 9.

If either of the parties to which any cause hath been referred, or any of the arbitrators to whom the same shall be referred hath died or refused to act, or if after an award made the same hath been set aside, then all the space of time from the impetration of the original writ in such case, until the death of the party or arbitrator, or refusal to act, or setting aside such award shall not be reckoned or estimated as part of the time limitted for the bringing or prosecuting such suit. *ibid. s.* 10.

Causes referred shall continue till an award is returned; and shall not abate by the death of a party before an award returned and judgement thereon: But on reasonable notice to the representative, &c. (not being a minor) the arbitrators may proceed to an award, and a judgement thereon shall be sufficient, notwithstanding such death. On the death of an arbitrator, or arbitrators, or refusal to act, the court shall appoint others, who shall have the same powers to decide. If award is not returned within eight months from the reference, the court may by order, compel the arbitrators to return one or give their reasons. Or they may reinstate the cause and take order for a trial in court as if the cause had not been referred. The party in whose favor an award is returned must cause a copy to be delivered to the adverse party, or his attorney three days before a judgement is moved for. 1785, *c.* 80, *s.* 11.

The court must have proof by the party's oath or affirmation, or otherwise, of the delivery of the copy as aforesaid, before they can direct such judgement to be entered. *ibid.*

The clerk cannot enter judgement on any award without a motion to and direction from the court.—*ibid.*

All matters of controversy, either of fact or a right in things and actions personal and uncertain, may be submitted to arbitration. Matters of freehold, and any right and title to a freehold, may be submitted to arbitrament if it be a submission concerning the right, title, or possession of lands and tenements; and the parties entering into mutual bonds, to stand to the award made relating to them, they forfeit their bonds unless they obey it. A thing certain, as a debt due by bond or record, and the like, cannot be submitted otherwise than by writing, and it is best to enter into bonds. Criminal matters cannot be submitted to ar-

bitrament: But if the party injured proceeds by way of action, as he may in assaults and batteries, libels, and the like, the damages he sustained, or expects to recover, may be submitted to arbitration.

Matrimonial causes, or any thing concerning the contract or dissolution of marriage, cannot be submitted to arbitrament: But the damages a person sustained by a promise of marriage or any thing relating to a marriage portion may be submitted.

There are several kinds of submission to arbitration, namely:

A submission by *words*, which is good, and the party in whose favor the award is made can enforce the perfomance of it. It is not expedient that a submission should be by parol, because the party may revoke it at pleasure at any time before the award made and that by word likewise. Judges will rarely enforce the performance of an award, when either the submission or award is by parol, because it lays so great a foundation for perjury.

The submission may likewise be by bond, in which case each party must give to the other a bond; which bond and condition must contain exactly the same words, only changing the names of the parties. The penalty of the bond should at least be the value of the thing submitted.

If the submission be of *all matters in difference*, the arbitrators, in disputes between two partners, may dissolve the partnership.

An award that one shall pay for the writings of the award, or the reckoning in the house where the award was made, is a void award, for such things are plainly out of submission. If a man and woman submit themselves to an award it is no good award that they shall intermarry: And the bodies of the parties are not submitted to arbitration.

A good award must be possible and lawful. If an award be that one of the parties shall kill, forge a deed, or the like, it is void. So, if it be awarded that money shall be paid to an infant, and that he shall make a release, it is void, for the infant's release is not good in law.

Where a thing is awarded to be done, which afterwards becomes impossible by the act of God, the party is excused; as if an award be, to deliver a horse before such a day, and he die before that day.

An award must be *certain*. For instance, if an award be, that one of the parties shall beg the other's pardon before such and such persons, it is good and certain enough; but if the award be, that he shall beg pardon in such manner and in such places as the other party shall appoint, it is not good.

An award that the defendant shall *give security* to the plaintiff for payment of a sum of money, is void for its uncertainty; not shewing *what* security he should give; whether by bond or otherwise.

It is usual, where arbitrators cannot agree, to call in another person as *umpire*, to whose sole judgement it is then referred. And it is settled that arbitrators cannot proceed on a reference, after they have once named an umpire; for then their authority ceaseth, though the time for making an award is not expired. But the appointment of an umpire before their own time for making an award is expired, may be good. Generally, the award shall be expounded according to the intent of the arbitrators, and not literally: But in the case of corruption, or other unfair practice, shall be deemed void. So, if the arbitrators, or any of them, appear to have been deceived; as where certain articles were shewn to only one of the arbitrators, and he to whom they were not shewn swore that if he had seen them, he believed he should not have made such an award; for in such case the award is procured by *undue means*. It is a rule in equity, that when it appears that any one of the arbitrators was any way *interested* in the matters in controversy, the award is to be set aside.

If arbitrators award a thing to be done, it may be proper for them to appoint a time and place for the doing of it; but if a thing is to be done generally, without mentioning time and place, it shall be done immediately.

If a sum of money be awarded to one of the parties, and that upon the payment thereof they both shall give mutual releases; if he who is to receive the money refuses it, yet upon a tender and refusal, he is as much obliged to sign a release as if he actually received it.

Form of a general Arbitration Bond.

Know all men by these presents that I *(A. B.)* of —— County, and state of Maryland, am held and firmly bound to *(C. D.)* of said county and state aforesaid, in —— pounds currency, to be paid to the said *(C. D.)* or to his certain attorney, exec'rs, adm'rs or assigns: To which payment well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents, sealed with my seal, and dated the —— day of ——, in the year of our Lord ——.

The condition of the above obligation is such, that if the above bound *(A. B.)* his heirs, executors and administrators, do and shall well and truly stand to, obey, observe and keep the award, order, arbitrament, final end and determination of *(B. B. & C. C.)* arbitrators indifferently named and chosen, as well for and on the part and behalf of the above bound *(A. B.)* as of the above named *(C. D.)* to arbitrate, award, order, adjudge, and determine of and concerning all and all manner of action and actions, cause and causes of action and actions, suits, bills, bonds, specialties, judgements, executions, accounts, debts, dues, sum and sums of money, quarrels, controversies, trespasses, damages and demands whatsoever, both in law and equity, which at any time heretofore have been had, made, moved, brought, commenced, sued, prosecuted, committed, omitted, done or suffered, by or between the said parties, so as the said award be made in writing, and ready to be delivered to the said parties on or before the —— day of —— next ensuing. Then this obligation to be void; otherwise of full force and virtue in law.

A. B. Seal.

Signed, sealed and delivered in presence of }

—— ——.

Condition to stand to the Award of three Arbitrators, or any two of them, and an Umpire appointed.

The condition of this obligation is such, that if the above bound (*A. B.*) his heirs, executors and administrators, do and shall well and truly stand to, observe and fulfil the a-

ward, order, arbitrament, final end and determination of —— or any two of them, arbitrators indifferently elected and named, as well by and on the part and behalf of the said (*A. B.*) as by and on the part and behalf of the abovenamed (*C. D.*) to arbitrate, award, order, adjudge and determine, of & concerning all and all manner of action and actions, cause and causes of action and actions, suits, bills, bonds, specialties, &c. &c. at any time heretofore had, made, moved, &c. &c. by or between the said parties; so as the award of the said arbitrators, or any two of them be made and set down in writing, under their or any two of their hands and seals, ready to be delivered to the said parties in difference on or before the said —— day of —— next ensuing. Then this obligation to be void; otherwise of full force and virtue in law.

And if the said arbitrators shall not make such their award of and concerning the premises, within the time limitted as aforesaid, then if the said (*A. B.*) his heirs, &c. for and on his and their part and behalf, do and shall well and truly stand to, observe, perform, fulfil and keep the award, determination and umpirage [*if the umpire be named*] of ——, being a person indifferently named and chosen between the said parties for umpire; [*if not named*] of such person as the said arbitrators shall indifferently choose for the umpire in and concerning the premises; so as the said umpire do make and set down his award and umpirage in writing, under his hand and seal, ready to be delivered to the said parties in difference, on or before the —— day of —— next ensuing. Then this obligation to be void; otherwise of full force and virtue in law.

[It is necessary to be understood that there is a difference between arbitration by *reference* of a court of justice, and arbitration by agreement of parties out of court.

The latter has no further force and effect than what it derives from the penalty of the obligation to adhere to the award of the arbitrators: the former (by *reference* of court) has all the operative force of a verdict in court; and may be set aside if a party can shew the award to have been improperly procured. Arbitration without reference of court, is of English original: Arbitration by reference of court is established by act of Assembly.]

Form of an Award on Arbitration without Reference from Court.

Whereas divers disputes and controversies have heretofore arisen between (*A. B. & C. D.*) of —— county, state of Maryland, concerning (*their affairs generally, or other matter*); and the said (*A. B. & C. D.*) having agreed mutually that all matters in difference between them relative to the said (*affairs, &c.*) should be submitted to the arbitrament, final end, and determination of the subscribers; and having entered into mutual bonds or obligations in the penalty of——, thereby binding themselves each to the other, to stand to, abide, perform, and keep the award which the subscribers shall make: Now know ye, that we the subscribers having fully examined and duly considered the proofs and allegations of both the said parties, do award as follows: That the said (*A. B.*) shall pay to the said (*C. D.*) the sum of (£48) currency, on or before the — next ensuing; upon the payment of which sum the said (*C. D.*) shall sign and deliver to the said (*A. B.*) a release in full for all demands or claims whatsoever which might have arisen in consequence of the matters in dispute submitted to the arbitrament, decision and award of the subscribers. And further, we do award and direct that all matters in dispute between the said parties as aforesaid, shall end by this award. In witness whereof we have hereunto set our hands and seals this —— day of ——, ——. Q. Q.
O. O.

Witnesses hereof.
A. P.
P. A.

Form of an Umpirage.

(*Recite as before, and then say*) Now know ye, that I —— umpire indifferently chosen by —— having deliberately heard and understood the griefs, allegations and proofs of both the said parties, and willing to set the said parties at unity and good accord, do by these presents arbitrate, and award as follows: That is to say, &c.

Form of an Award under Reference from Court.

We the subscribers appointed referrees, by the honorable the justices of —— —— court, at —— term, ——,

in a cause pending in said court, between (*A. B.*) plaintiff and (*C. D.*) defendant, have, by virtue and in consequence of said appointment, after hearing the proofs and allegations produced by the parties, and on due deliberation thereupon had, awarded and determined as follows, to wit: We do hereby award and determine, that (*C. D.*) the defendant in the cause aforesaid, pay unto (*A. B.*) the plaintiff, the sum of (£37 10 0) currency, damages, and all the legal costs of suit, that mayhave accrued in prosecuting and defending the suit aforesaid by (*A. B.*) the plaintiff, to the date of this award. In witness whereof we have hereunto set our hands and seals, the —— day of ——, ——.

To the honorable the justices of —— county court. } J. F. Seal. M. H. Seal.

BAIL.

Bail (from the French *bailler* to deliver) signifies the delivery of a man outof custody, upon the undertaking of one or more persons for him, that he shall appear at a day limitted to answer and be justified by the law.

Excessive bail ought not to be required, nor excessive fine imposed, nor cruel or unusual punishments inflicted by the courts of law. *Declaration of Rights, art.* 22.

Form of a Bail Piece.

JOHN DOE, plaintiff, against RICHARD ROE, defendant.

You (*J. D.*) and (*R. F.*) do jointly and severally acknowledge yourselves special bail for the said (*R. R.*) at the suit of the said (*J. D.*) in an action of debt, (*on the case, or as the case may be*) brought by the said (*J. D.*) against the said (*R. R.*) in (*the general court of the ——shore, or —— county court, or as the case may be*). They acknowledge themselves to be content therewith, this —— day of ——, ——, before me one of the justices of the peace in and for —— county.

Witness my hand. J. S.

To the Honorable the Judges of the —— Court.

R. N. Esq. to appear for the defendant.

Where bail is taken to the general court, it must be acknowledged before two justices of the peace, and to the county courts before one.

The Sheriff shall not, in any action of trespass, take a bail-bond exceeding 2,000lbs. of tobacco, where no declaration is sent with the writ. 1715, *c.* 46, *s.* 3.

Form of a Bail-Bond.

Know all men by these presents that we *(R. R. & D. & R. F.)* of —— county, and State of Maryland, are held and firmly bound unto *(G. C.)* sheriff of —— county, in the just and full sum of *(fifty pounds current money)* to be paid to the said *(G. C.)* his certain attorney, executors, administrators or assigns; to which payment well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the —— day of ——, ——.

The condition of the above obligation is such, that if the above bound *(R. R.)* do and shall make his personal appearance before the justices of the next county court, to be held at the court-house in ——, in and for —— county, on the —— day of —— next, and then and there answer unto *(J. D.)* in a plea of trespass upon the case, and so forth, and shall not depart the same court without leave first had and obtained thereof; then the above obligation to be void and of none effect, otherwise to be and remain in full force and virtue in law.

Signed, sealed and delivered in presence of
P. P.
D. D.

R. R. Seal.
J. D. Seal.
R. F. Seal.

The judge or justices by and before whom any recognizance of bail shall be taken and acknowledged must carefully examine into the circumstances and sufficiency of the bail, and be careful that they do not take any recognizance of bail of persons that shall not appear to them to have sufficient estate within this state to answer the same at the time of taking and acknowledgement thereof. 1778, *c.* 21, *s.* 5.

The judges of the general court may make rules for justifying bail, so as not to compel a personal appearance of the cognizors. 1715, *c.* 28, *s.* 4.

The justices who take special bail may examine the sureties on oath, as to the value of their estates. *ibid. s.* 6.

Bail in any case may be taken in the County Court by one associate justice. 1801, *c.*74, *s.* 4.

On judgement against bail, execution may be issued as if for his own proper debt. 1778, *c.* 21, *s.* 6.

Special bail may be awarded in actions against persons for not attending as witnesses when summoned. 1715, *c.* 37, *s.* 5.

Special bail may be awarded on affidavit or other evidence to the Court, against persons offending under the law for preventing injury being done to harbors. 1774, *c.* 18, *s.* 2. And in like manner may be awarded in suits under the tobacco inspection law. 1801, *c.* 63, *s.* 43.

Special bail may be awarded on affidavit or other proof in actions of trover and of detinue. 1753, *c.* 17, *s.* 2.

[If a person be brought before a justice, if it appears that no felony is committed, he may discharge him; but if a felony be commited, though it appears not that the party accused is guilty; yet he cannot discharge him, but must commit or bail him.]

[It may not be amiss to state here the difference between bail and mainprise, which is, that mainpernors are only surety, but bail is a custody; and therefore the bail may retake the prisoner, if they doubt he will fly, and detain him, and bring him before a justice, and the justice ought to commit the prisoner in discharge of the bail, or put him to find new sureties.]

Garnishees can be held to bail. See page 32 of this book.

The several county courts of Maryland, during their respective sittings, and at all other times the chief justice of the several districts respectively, are authorised and empowered, upon application, to issue their writ of *habeas corpus*, and cause to be brought before them, any person or persons who may be in confinement within their respective jurisdictions, and to enquire into the cause of such confinement, and either discharge, admit to bail, or commit such person or persons, as the case may require; in the same manner as is practised by the judges of the general court. 1798, *c.* 106.

Upon every arrest made by any constable upon a warrant for debt, it is lawful for the constable making the ar-

rest to take bond from the person arrested, in a sum not exceeding fifteen pounds, conditioned for his appearance before a justice of the peace of the same county, to be named in the said condition, on the return day of the warrant, to answer the suit of the plaintiff, and in case of refusal to give such bond, with sufficient security, such constable may lodge such person in the common jail of the county, to be safely kept by the sheriff until the return day of the warrant. 1791, c. 68, s. 16.

Form of a Bail-Bond, to be taken by a Constable from a defendant, for his personal appearance on the return day of the Warrant.

Know all men by these presents, that we *(B. P. & B. M.)* both of —— county and State of Maryland, are held and firmly bound unto *(J. B.)* constable of (—— *hundred)* of said county, in the sum of fifteen pounds current money, to be paid to the said *(J. B.)* or to his certain attorney, executors, administrators or assigns; to which payment well and truly to be made and done, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this —— day of ——, ——.

The condition of the above obligation is such, that if the above bound *(B. P.)* shall well and truly make his personal appearance before *(H. K.)* a justice of the peace for said county, on the —— day of —— next, to answer *(R. R.)* in a plea of debt—*(or damages)* on warrant, then the above obligation to be void and of none effect; otherwise to be and remain in full force and virtue in law.

Signed, sealed, acknowledged and delivered in presence of } B. P. Seal:
A. F. B. M. Seal.
J. K.

Sheriffs and their deputies may take bail-bonds payable to the state, with security if thought necessary from all persons taken on any criminal writ, for any offence less than felony. 1780, c. 10, s. 2.

Form of a Bail-Bond to be taken by a Sheriff, (or his deputy) from persons arrested by them on any criminal writ, for any offence less than felony.

Know all men by these presents, that we *(A. B. & C. D.)* of —— county and State of Maryland are held and firmly bound to the state aforesaid in the sum of £100 pounds current money, to be paid to the said state: To which payment well and truly to be made and done, we bind ourselves, and each of us; our, and each of our heirs, executors and administrators, jointly and severally, in and for the whole, firmly by these presents. Sealed with our seals, and dated this —— day of ——, in the year of our Lord ——.

The condition of the above obligation is such, that if the above bound *(A. B.)* do and shall make his personal appearance before the justices of the next county court, to be held at the court-house in ——, in and for —— county, on the —— day of —— next, and then and there attend the said court from day to day and not depart therefrom without leave of the said court, then the above obligation to be void and of none effect; otherwise to be and remain in full force and virtue in law.

Signed, sealed, and delivered in presence of } A. B. Seal. C. D. Seal.

——. ——.

If the criminal is not sufficient for the sum and he cannot find security, he can be taken before a magistrate to be dealt with according to law. 1780, *c.* 10, *s.* 2. The bail-bonds must be returned to court on the first day thereof.

Offences for which Offenders cannot be bailed.

1. Upon an accusation of treason.
2. Murder.
3. Nor in case of manslaughter, if the prisoner be clearly the slayer, (unless where the slaying was evidently in self-defence.)
4. Nor such as being committed for felony, have broken prison, because it not only carries a presumption of guilt, but is also superadding one felony to another.
5. Approvers.

6. Persons taken with the mainour, or in the fact of felony.
7. Persons charged with arson.

All which are clearly not admissible to bail by justices. Others are of a dubious nature; as,

1. Thieves openly defamed and known.
2. Persons charged with other felonies, or manifest and enormous offences, not being of good fame.
3. Accessories to felony that labor under the same want of reputation.—These seem to be at the discretion of justices, whether bailable or not.

The last class *must* be bailed upon offering sufficient security; as

1. Persons of good fame, charged with a bare suspicion of manslaughter, or other inferior homicide.
2. Such persons being charged with petit larceny, or any felony not before specified.
3. Or with being accessary to any felony.

Form of Bail to be taken by a justice of the peace, or an associate justice of a county court, where an offender is arrested or has been committed to prison for an offence that is bailable.

State of Maryland, } MARYLAND, —— COUNTY, TO WIT:
vs.
G. R. £100 } On the —— day of ——, ——, be-
P. Q. £50 } fore me the subscriber, one of the
I. I. £50 } justices *(or associate justices)* for —— county *(or —— county court)* personally appeared (*G. R. P. Q. & I. I.*) and severally acknowledged themselves to owe and stand indebted to the State of Maryland, that is to say, the said (*G. R.*) in the sum of (£100) and the said (*P. Q. & I. I.*) in the sum of (£50) current money each, to be made and levied of their bodies, goods and chattels, lands and tenements, for the use of the said state; upon condition nevertheless, that if the said (*G. R.*) who was committed to the jail of —— county on the —— day of —— last past, by (*J. S.*) Esquire, for *(burglariously taking and carrying away in a felonious manner, one hat, one pair of shoes, or other things)* the property of (*T. O.*) shall make

his personal appearance at —— county court, to be held on the —— day of —— next ensuing, then and there to answer such charges as may be alledged against him, and not depart therefrom without leave of the said court, then this recognizance to be void and of none effect, otherwise to be and remain in full force and virtue in law. Witness my hand. A. S.

[If the offender be a femme covert, under age, or a slave, he cannot be bound; in which case two sureties must be bound for him. And so, when the party is in prison, and thus absent.]

Form of a warrant for deliverance of a person, when bailed as above.

Maryland, —— County, To Wit:

Whereas *(G. R.)* of —— committed to jail for *(burglary)* by *(J. S.)* Esquire, one of the justices of the peace for —— county and state aforesaid, hath before me found sufficient surety for his personal appearance before the justices of —— county court at their session to be held at —— on the —— day of —— next, then and there to answer to such matters as shall be objected against him for the *(burglary)* for the suspicion whereof he was taken and committed to your jail: you are therefore hereby commanded, that if the said *(G. R.)* do remain in your jail for the said cause, and for none other, then you forbear to detain him any longer, but that you deliver him thence and suffer him to go at large. Given under my hand and seal this —— of ——, ——. A. S. Seal.

To the Sheriff of said County.

BANISHMENT.

Any senator, or member of the council, who shall hold or execute any office of profit, or receive, directly or indirectly, at any time, the profits, or any part of the profits, of any office exercised by any other person, during his acting as such, his seat, on conviction in a court of law by the oath of two credible witnesses, shall be void, and he shall suffer the punishment for wilful and corrupt perjury, or be banished the state forever, or disqualified

forever from holding any office or place of trust or profit, as the court may adjudge. *Constitution, art.* 39.

Any governor, chancellor, judge, register of wills, attorney-general, register of the land office, commissioner of the loan-office, register of the chancery court, or any clerk of the common law courts, treasurer, naval officer, sheriff, surveyor, or auditor of public accounts, who shall receive, directly or indirectly, at any time, the profits, or any part of the profits, of any office held by any other person, during his acting in the office to which he is appointed, his election, appointment and commission, on conviction in a court of law, by the oath of two credible witnesses, shall be void, and he shall suffer the punishment for wilful and corrupt perjury, or be banished the state forever, or disqualified forever from holding any office or place of trust or profit, as the court may adjudge. *ibid. art.* 53.

Persons forging or counterfeiting foreign coins, shall, for the second offence, be branded on the cheek and banished. 1707, *c.* 4, *s.* 2.

Persons counterfeiting and using a public seal of the state, or stealing the same, or corruptly affixing it to any deed, &c. shall be whipped, pillored, and banished forever. 1717, *c.* 8.

Persons marrying within the degree of consanguinity mentioned by act of assembly, to forfeit £500: 0: 0 or be banished the state forever. 1777, *c.* 12, *s.* 2, 1785, *c.* 35, 1790, *c.* 20.

The governor of Maryland has power to commute any sentence of death to banishment, on such terms and for such period, as he shall think expedient. 1795, *c.* 82, *s.* 2.

BANKS.

There are three Banks (instituted by act of assembly) at present in operation in the state of Maryland, to wit:

1. *The Bank of Maryland;*
2. *The Bank of Baltimore; and*
3. *The Union Bank of Maryland.*

The *Bank of Maryland* was incorporated in the year 1790, under the name of the *President and Directors of the Bank of Maryland.* The capital consists of three hundred thousand dollars. It is governed by a president and

twelve Directors, chosen annually from among the stockholders. The president is entitled to all the powers and privileges of a director. If any director should die, remove out of the state, resign, or otherwise be disqualified to serve as a director for the year for which he has been elected, the remaining directors may, at their next meeting thereafter, elect by ballot another person to serve out the residue of the year. If the president resigns, or his office becomes otherwise vacated, another one can be elected to supply his place. Any nine of the directors are competent to elect a president if the whole should not attend. The directors are obliged to meet quarterly, for the purpose of regulating the affairs of the bank, any seven of whom make a board, which has power to adjourn from time to time; and the president, or any three of the directors, may call a special meeting at any time they may think necessary. The board of directors have power to declare half-yearly dividends; and they are obliged at every quarterly meeting to choose three directors to inspect the business of the bank for the ensuing three months; who on the evening of every Saturday, must examine into the state of the cash account, and of the notes received and issued, and see that those accounts are regularly balanced and transferred.

The directors have power to make rules and to prescribe the forms of doing business.

A majority of the votes of nine directors is required for a choice, in the appointment of a cashier.

Any director, officer, or other person, holding any share or capital in this bank, are subject to prosecution by indictment in any court of law of this state, in the name of the state for any fraud or embezzlement touching the money or property of the bank, and upon conviction thereof will, besides the remedy that may be had by action in the name of the president and directors of the Bank of Maryland for the fraud, forfeit all his share or stock in the said bank to the company.

No stockholder is answerable for any *deficit* of the capital stock of this bank, further than to the amount of the stock or shares which he may hold at the time.

Persons indebted to this bank for money borrowed, or by bond, note, or bill, given or endorsed by them, with an express consent in writing that they may be made negociable at this bank, and shall neglect or refuse to make pay-

ment at the time the same may become due, are subject to immmediate execution. The mode of proceeding is this : The president causes a demand of payment to be made in writing on the person of the said delinquent ; or, if he is not to be found, to have the same left at his last place of abode ; and if the money is not paid within *ten days* after such demand or notice, the president writes to the clerk of the general court, or of the county in which the defaulter resides, or did reside at the time he contracted the debt, and sends to the clerk the bill, bond, or note due, with proof of the demand made, and orders the clerk to issue *capias ad satisfaciendum*, *fieri facias*, or attachment by way of execution, on which the debt and costs may be levied, by selling the property of the defendant for the sum or sums mentioned in the bond, note or bill.

The clerks are bound to issue such execution when so requested, and to make the writ returnable to the court which first sits thereafter ; and such writ is as good and valid in law to all intents and purposes, as if the same had issued on judgement regularly obtained according to the ordinary proceeding in the court.

Such executions are not liable to be stayed or delayed by any supersedeas, writ of error, appeal, or injunction from the chancellor.

But before any such execution shall issue, the president of the bank must take an oath (or affirmation) ascertaining whether the whole, or what part of the debt due on the bond, bill or note is due, which oath or affirmation must be filed in the office of the clerk of the court from which the execution shall issue ; and if, on the return of the execution, the defendant shall dispute the whole or any part of the debt, the court before whom it is returned may order an issue to be joined, and trial to be had at the same court at which the return is made, and make such other proceedings that justice may be done in the speediest manner.

The act (1791, c. 67) for regulating the mode of staying execution, cannot affect any judgement or execution under the act incorporating the Bank of Maryland.

Any person forging, or attempting to pass notes of this Bank knowing them to be forged, is guilty of felony ; and, on conviction thereof in any court of law in the state, is subject to any punishment not extending to death, or to more than seven years servitude.

In the Bank of Maryland every stockholder has as many votes as he holds shares, as far as twenty shares ; and not more than one vote for every five shares thereafter.

By the act of April, 1792. c. 1, the stealing or taking by robbery any of the notes of the Bank of Maryland, is construed to be felony, as if of any other goods of the value due thereon, and is punishable in like manner.

By several acts of assembly, it is made felony to forge or counterfeit the notes of *any* bank, established by charter from the United States or any particular state, or offering to pass them, knowing them to be forged or counterfeited ; and the stealing of such notes is deemed felony likewise.

The Bank of Baltimore was instituted by act of assembly in 1795 ; the original capital stock of which is one million two hundred thousand dollars. It was incorporated under the name of the *President, Directors and Company of the Bank of Baltimore.* They are enabled to receive, enjoy, and dispose of, lands, goods, &c. to sue and be sued, to make a common seal, to make by-laws and regulations, and to execute all other things necessary in relation to the bank. This bank is governed by a President and fourteen Directors ; the president always to be elected from among fifteen Directors first chosen by the stockholders. In case the place of a Director becomes vacated by resignation, removal, absence, or otherwise, his place can be supplied by a new election for the residue of the year.

The cashier and treasurer of this institution are obliged to give bond before they enter upon the duties of their offices, in the penalty of fifty thousand dollars, conditioned for good behaviour.

The corporation of this bank can only hold such lands, tenements and hereditaments, as are requisite for its transacting business, and such as shall have been *bona fide* mortgaged to it by way of security, or conveyed in satisfaction of debts previously contracted in the course of its dealings, or purchased at sales upon judgements which shall have been obtained for such debts. The discount upon loans is confined to *six per centum per annum.* The corporation can make no loan to this or any other individual state, or the United States, exceeding fifty thousand dollars ; nor can it loan its money to any foreign state whatever without leave from the legislature.

Stockholders actually resident in the United States, and none other, may vote in elections by proxy.

Not less than nine Directors of this bank can constitute a board, and the president must be one of them, unless he be sick or otherwise necessarily absent; in which case his place may be supplied by any other Director whom he, under his hand, shall nominate for the purpose.

Not more than two-thirds of the Directors in office, exclusive of the president, are eligible for the next succeeding year; but the director who shall be president at the time of the election may always be re-elected.

None but a stockholder (except in the case of directors chosen by the state) being a citizen of the United States, is eligible as a Director; no Director of any other bank can be at the same time a director of this bank; half yearly dividends of so much of the profits as the Directors may deem proper are to be declared and made; and once in every year the Directors are obliged to lay before the stockholders a general statement of the accounts of the bank.

Any sixty stockholders, holding 200 shares or upwards in this bank, can at any time call a general meeting of the stockholders, for purposes relative to the institution, by giving ten weeks notice in two Gazettes in Baltimore, and specifying in the notice the object of the meeting.

Each Director, cashier, and treasurer before he enters upon the duties of his office, must take the following oath or affirmation, as the case may be:—

I ——do swear (or affirm) that I will faithfully execute the duties of ——, agreeable to the provisions of the law, and the trusts reposed in me to the best of my skill and knowledge.

The total amount of the debts which this corporation can at any time owe, is limitted to double the amount of capital actually paid into the said bank; and in case of excess, the Directors under whose administration it may happen, are liable for the same in their private capacities. The state of Maryland has the right of choosing two Directors, one to be chosen by the senate and one by the House of Delegates. The capital stock and funds of this bank are deemed by law to be personal and not real estate. The corporation cannot issue any notes for a less sum than five dollars.

The act of incorporation for the Bank of Baltimore is limitted to twenty years and until the next session of assembly thereafter, from the session of assembly in November 1795; which will expire in November 1816.

Persons holding stock in this Bank are entiled to vote as follows :—

For one share and not more than two, one vote.

For every two shares above two, and not exceeding ten, one vote.

For every four shares above ten and not exceeding thirty, one vote.

For every six shares above thirty and not exceeding sixty, one vote.

For every eight shares above sixty and not exceeding one hundred, one vote, but no person or body politic is entitled to a greater number than thirty votes.

The *Union Bank of Maryland* was instituted by the association of a number of individuals in the spring of the year 1804, and incorporated in November of the same year under the name of the *President and Directors of the Union Bank of Maryland*. The capital stock consists of three millions of dollars. The affairs of this bank are conducted by a president and sixteen directors, chosen annually by the stockholders. The state on becoming a stockholder to the amount of forty thousand dollars, is entitled to appoint two directors, and when to the amount of two hundred and fifty thousand dollars, it will be entitled to appoint four directors, to be annually chosen by joint ballot of both houses of assembly.

This bank cannot issue notes for a less sum than five dollars ; and, generally, its fundamental articles are similar to those of the bank of Baltimore.

The act of incorporation for the Union Bank of Maryland is in force till the year 1815, and until the end of the next session of assembly thereafter.

Each stockholder in this bank is entitled to votes in the following proportions :

For one share and not more than two, one vote each.

For every two shares above two and not exceeding ten, one vote.

For every four shares above ten and not exceeding thirty, one vote.

For every six shares above thirty and not exceeding sixty, one vote.

For every eight shares above sixty, and not exceeding one hundred, one vote.

For every ten shares above one hundred, one vote.

But no person or body politic can be entitled to a greater number than sixty votes.

Besides these three Banks there is another one in operation in the City of Baltimore, called the *Office of Discount and Deposit.* This is a *Branch* from the *Bank of the United States,* which was established by act of Congress on the 25th of February, 1791. The rules, &c. by which it is governed are prescribed by the directors of the parent bank at Philadelphia. It is privileged by law for the purposes of discount and deposit only.

BASTARDY.

The word *Bastard* is of Saxon origin; and is compounded of *base* (vile or ignoble) and *start* or *steort,* (signifying a rise or original,) the same as *upstart* is a person suddenly risen from a mean extraction in general.

Any justice of the peace may issue his warrant to the constable to take any woman who he is informed has an illegitimate child. 1781, *c.* 13, *s.* 1.

Form of a Warrant against the Mother of an illegitimate child.

MARYLAND, —— COUNTY, TO WIT:

Whereas information hath been made to me the subscriber one of the justices of the peace in and for said county, by *(A. F.)* constable for —— hundred, that a certain *(E. D.)* within his hundred, was delivered of an illegitimate child; you are therefore hereby required to take and bring before me, or some other justice of the peace for said county, the said *(E. D.)* to be examined touching the premises, and further to do what shall be then enjoined her agreeably to law. Given under my hand and seal this —— day of ——, ——. J. S. Seal.

To the Constable.

Form of Examination on Return of the foregoing Warrant.

The examination of *(E. D.)* a single woman taken by me *(J. S.)* one of the justices of the peace in and for —— county (after being brought before me on warrant) on

this —— day of ——, —— ; who saith that she was delivered of a male illegitimate child on the —— day of —— last, and that she refuses to make known the father of the said child.

Taken and signed before me,

J. S.

When brought before the justice, he can call on her for security to indemnify the county from any charge that may accrue by means of such child. If she neglect or refuse to give such security, the justice can commit her to the custody of the sheriff of the county, to be by him safely kept until she shall give such security. But if she shall on oath discover the father, the justice must discharge her from such warrant ; and must call the father (if he resides in the county) before him, and compel him to give security in the sum of thirty pounds current money, to indemnify the county from all charges that may arise for the maintenance of such child. If the father be a resident of any other county within the state, then the justice shall transmit, under his hand and seal, a copy of the proceedings in such case had, and the justice to whom the said proceedings shall be sent, shall forthwith proceed against the father as above directed. 1781, *c.* 13, *s.* 1.

Form of taking Security, where the Woman refuses to make known the Father.

State of Maryland against E. D. P. P. £30

Maryland, — County, To Wit : On this — day of —, —, before me, one of the justices of the peace in and for said county, appear (*E. D. & P. P.*) and acknowledge themselves to owe and stand justly indebted to the state of Maryland in the sum of £30 current money, which they yielded and granted should be made and levied of their bodies, goods and chattels, lands and tenements, for the use of the said state : Upon condition nevertheless, that if the said (*E. D.*) the mother of a male illegitimate child shall indemnnify said county from any charge that may accrue by means of the said child, then the above recognizance to be void and of none effect ;

otherwise to be and remain in full force and virtue in law. Witness my hand.

J. S.

Form of Commitment on refusal to make known the Father, or to give security.

MARYLAND, —— COUNTY, TO WIT:

You are hereby commanded to receive into your jail & custody (*E. D.*) a single woman, who was delivered of a male illegitimate child on the —— day of ——, and refuses to enter security or make known the father of said child, as required by act of assembly in such case provided; and her the said (*E. D.*) safe keep until she enter security or discover the father, in conformity with the said act, or until she shall be thence discharged according to law. Given under my hand and seal this —— day of ——, ——.

J. S. Seal.

To the Sheriff of said county.

Form of Examination where the Father is made known.

The examination of (*E. D.*) a single woman taken on her corporal oath by me (*J. S.*) one of the justices of the peace of —— county, on this —— day of ——, ——; who saith that she was delivered of a male illegitimate child on the —— day of —— last, and that a certain (*J. L.*) of the said county is the father of the same child. E. D.

Taken and signed before me,

J. S.

Form of a Warrant to apprehend the Father.

MARYLAND, —— COUNTY, TO WIT:

On this —— day of ——, ——, before me, one of the justices of the peace in and for said county, appears (*E. D.*) and makes oath on the holy Evangely of Almighty God, that she was delivered of a male illegitimate child on the —— day of —— last, and that a certain (*J. L.*) of said county is the father of the same illegitimate child.

You are therefore hereby commanded fortwith to apprehend the said named (*J. L.*) and bring him before me, or some other justice of the peace for said county, to enter security in the sum of £ 30 current money to indemnify —— county from all charges that may arise for the maintenance of the said male illegitimate child, or otherwise to comply with the act of assembly in such case made and provided. Given under my hand and seal this —— day of ——, ——. J. S. Seal.

To the Constable.

If any person that is charged with being the father of a Bastard child, considers himself aggrieved by the judgement of a justice of the peace, it is lawful for the justice to cause such person to enter into recognizance for his appearance at the next county court, who will take cognizance thereof and direct a jury trial; and if he be found guilty by the verdict of a jury the court must immediately order him to give security to indemnify the county from any charges that may accrue for the maintenance of the child; and on neglecting or refusing to give such security, he will be committed to the custody of the sheriff until he complies. Any person swearing falsely in such matters is to suffer the same pains and penalties as persons guilty of wilful and corrupt perjury. 1731. *c.* 13, *s.* 2.

Form of taking Recognizance for the appearance at court of a person who considers himself aggrieved by the judgement of a justice of the peace.

State of Maryland against J. L. P. L. £30 } MARYLAND, — COUNTY, TO WIT: On the ——day of ——, ——, before me, one of the justices of the peace in and for said county, appear (*J. L. & P. L.*) and acknowledge themselves to owe and stand justly indebted to the state of Maryland in the sum of £30 current money, which they yielded and granted should be made and levied of their bodies, goods and chattels, lands and tenements, for the use of the said state: Upon condition nevertheless, that if the said (*J. L.*) shall make his personal appearance at our next county court before the justices thereof, to be held at the

court-house at ——, in and for said county, and then and there answer what shall be objected against him; and especially as being the father of a male illegitimate child, of which a certain (*E. F.*) was delivered on the —— day of —— last; and shall attend the said court from day to day, and not depart the same without leave first had and obtained thereof, then this recognizance to be void and of none effect; otherwise to be and remain in full force and virtue in law. Witness my hand. J. S.

By 1785, c. 47, s. 2, the justices are directed to return such recognizances to the next county court, which is to be recorded, and process to issue thereon.

Form of taking Security, where the person charged does not deny being the father.

State of Maryland } MARYLAND, — COUNTY, TO WIT:
against } On this —— day of ——, ——,
J. L. } £30 } before me, one of the justices of
P. L. } the peace in and for said county, appear (*J. L. & P. L.*) and acknowledge themselves to owe and stand justly indebted to the state of Maryland in the sum of £.30 current money, which they yielded and granted should be made and levied of their bodies, goods and chattels, lands and tenements, for the use of the said state: Upon condition nevertheless, that if the said (*J. L.*) shall indemnify —— county from all charges that may arise for the maintenance of a male illegitimate child, begotten on the body of (*E. D.*) of which she was delivered on the —— day of —— last, then this recognizance to be void and of none effect; otherwise to be and remain in full force and virtue in law. Witness my hand. J. S.

Form of a Commitment, where the person charged as being the father cannot give security to indemnify the county, or to appear at court.

MARYLAND, —— COUNTY, TO WIT:
You are hereby commanded to receive into your jail

and custody *(J. L.)* who is charged by *(E. D.)* as being the father of a male illegitimate child, of which she was delivered on the —— day of —— last, and him the said *(J. L.)* safe keep, until he shall enter security in the sum of £30 current money, *(to appear at our next county court, if he denies being the father)*—to indemnify —— county from all charges that may arise for the maintenance of the said illegitimate child, or until he shall be thence discharged according to law. Given under my hand and seal the —— day of ——, ——. J. S. Seal.

To the Sheriff of } said county. }

Any justice, on application of any person having the care of a Bastard child, may issue an order on the father, his sureties, the executors, administrators, &c. for the payment of a sum, not exceeding thirty dollars per annum, till the child shall arrive to the age of seven years, on failure whereof *scire facias* may issue on the recognizance. 1796, *c.* 34.

Form of an Order requiring the Father or his Surety to pay, &c.

—— County, To Wit:

On application to me by *(E. D.)* the mother of a male illegitimate child, for an order on *(J. L.)* the father of her said child, for a sum of money adequate for the maintenance of said child; she the said *(E. D.)* on this —— day of ——, ——, before me one of the justices of the peace in and for said county, appears, and makes oath on the Holy Evangely of Almighty God, that she hath not received any sum or sums of money from *(J. L.)* or *(P. L.)* his security, for the use or maintenance of her illegitimate child, in her care and custody, and that she hath maintained the said child from the —— day of—— last, to the —— day of ——, at which time it was of the age of one year. You are therefore hereby ordered and required, to pay unto *(E. D.)* *(or other person having the care of such child)* the sum of —— dollars, as an adequate compensation for the maintenance of the said illegi-

timate child, for every year, until the same shall arrive at the age of seven years. Given under my hand and seal the day above written. J. S. Seal.

To J. L. and P. L. or either of them.

Form of Proof of the Service of the foregoing Order.

On this —— day of ——, ——, before me one of the justices of the peace in and for said county, appears *(J. M.)* and makes oath on the Holy Evangely of Almighty God, that he was present on the —— day of —— last, when *(E. D.)* served the above order on *(J. L. & P. L.)* and demanded payment thereof, and at the same time *(E. F.)* makes oath as aforesaid, that the money due on the same order is still unpaid. J. S.

BANKRUPTS.

The Commissioners of Bankrupt in England are entitled to their goods in the hands of factors here, not accounted for to their principal, and to an account thereof. 1704, *c.* 29, *s.* 1.

But the factors of such commissioners are obliged first to give security to satisfy the debts contracted by such bankrupts or their factors after importation of such cargoes, in this state. *ibid. s.* 2.

[*For other matters see Insolvent Debtors.*]

BIGAMY.

Bigamy is where a man has two wives successively: *Poligamy*, where he hath several wives at the same time: But they are commonly confounded one with the other.

By act of assembly, 1706, c. 8, the statute of James I. relative to Bigamy is made the law of Maryland, and declared to be in force in this state.

This statute enacts, That if any person within his majesty's dominions of England and Wales, being married shall marry any person, the former husband or wife being alive,

such offence shall be felony, and the person so offending shall suffer death as in cases of felony; and shall be tried in the county where he or she was apprehended, as if the offence had been committed in such county.

Provided, that this shall not extend to any person, whose husband or wife shall be continually remaining beyond the seas for seven years together:

Or whose husband or wife shall absent him or herself the one from the other for seven years together in any part within his majesty's dominions, the one of them not knowing the other to be living within that time.

BILLIARD TABLES.

Persons in the different counties of this state keeping for use Billiard Tables without license, forfeit one hundred and fifty dollars, recoverable by indictment. 1798, *c.* 113, *s.* 3. The County clerks will grant a license to any person applying for the same on payment of fifty dollars. The licenses are to be renewed annually on the first day of April: And if licenses are applied for after the first day of April, the payment is in proportion.

The tax on Billiard Tables in the incorporated towns of Maryland, are regulated by the respective corporations.

The County Clerks are obliged to lay before every session of the Levy Court, a return of the sums received under the act for regulating Billiard Tables, under the penalty of fifty dollars.

Billiard Tables are excepted out of the act to prevent excessive gaming, prohibiting E. O. &c. and faro tables, 1797, *c.* 110, *s.* 2.

BILLS OF SALE.

No goods or chattels, whereof the vendor, mortgagor, or donor, shall remain in possession, shall pass, alter or change, or property thereof be transferred to any purchaser, mortgagee, or donee, unless the same be by writing, acknowledged before one *provincial* justice, or one justice of the county where such seller, mortgagor or donor

shall reside, and be within twenty days recorded in the records of the same county. 1729, *c.* 8, *s.* 5.

Form of a Bill of Sale where the Seller retains the Possession.

Know all men by these presents, that I (*J. J.*) of —— county and State of Maryland, for and in consideration of the sum of £100 current money, to me in hand paid by (*G. G.*) of the county and state aforesaid, at and before the sealing and delivery hereof, the receipt whereof I do hereby acknowledge; have granted, bargained and sold, and by these presents do grant, bargain and sell unto the said (*G. G.*) his executors, administrators and assigns, one bay gelding, four years old, and marked on the near shoulder J. J. one black mare, eight years old, marked P. on the near buttock, and her off hind foot white; one grey colt, two years old, neither marked nor docked; two milk cows, one red and the other black; one plantation waggon; two ploughs; one harrow, and all the geers; all which property is now in my possession. To have and to hold the same described property above bargained and sold to the said (*G. G.*) his executors, administrators and assigns forever; to his and their only proper use and benefit: And I the said (*J. J.*) for myself, my executors and administrators, shall and will warrant, and forever defend by these presents to the said (*G. G.*) his executors, administrators and assigns, the said described property, against me, my executors and administrators, and against all and every other person or persons whomsoever, claiming the same or any part thereof. In testimony whereof, I have hereunto set my hand and affixed my seal, the —— day of ——, ——.

J. J. Seal.

Signed, sealed and delivered in presence of }
A. B.
C. D.

Form of the Acknowledgement of the foregoing.

Maryland, —— County, To Wit:
On this —— day of ——, before me one of the justices

of the peace in and for said county, appears (*J. J.*) and acknowledges the foregoing writing to be his act and deed according to the true intent and meaning thereof, and the act of Assembly in such case made and provided.

J. S.

No negro or other slave, whereof the donor shall retain the use and possession, shall pass, alter or change, or any property thereof be transferred to any donee, unless the gift be by writing, under the hand and seal of the donor, and acknowledged before one *provincial* justice, or before one justice of the county where the donor shall reside, and recorded in the records of the same county, within twenty days from the time of the execution thereof. 1763, *c.* 13, *s.* 2.

But nothing contained in the foregoing section is to be construed to extend to make void any parole gift of any negro or other slave, where there shall be an express delivery of such slaves in pursuance of such gift, and where the sole use and possession of the same shall be transferred to the donee, nor to make void any bequest of any negro or other slave by any last will and testament. *ibid. s.* 3.

Form of a Bill of Sale not neceffary to be recorded, and where the property is given up at the time of executing it.

Know all men by these presents, that I (*J. J.*) of —— county and State of Maryland, for the consideration of the sum of £100 current money, to me in hand paid by (*G. G.*) of the county and State aforesaid, the receipt whereof I do hereby acknowledge, have granted, bargained, sold and delivered, and by these presents do grant, bargain, sell and deliver unto the said (*G. G.*) my negro slave *Hercules*, which said slave Hercules, I will warrant and defend to the said (*G. G.*) his executors, administrators and assigns, against me, my executors and administrators, and against every other person or persons whomsoever. In witness whereof, I have hereunto set my name and affixed my seal, this —— day of ——, ——.

In presence of.

A. B. J. J. Seal.

C. D.

Form of a Bill of Sale, with a clause of Redemption, to be recorded.

Know all men by these presents, that I (*J. J.*) of —— county and State of Maryland, for and in consideration of the sum of £25 current money, to me in hand paid by (*G. G.*) of the county and state aforesaid, at or before the ensealing and delivering of these presents, the receipt whereof I the said (*J. J.*) do hereby acknowledge, have granted, bargained and sold, and by these presents do grant, bargain and sell unto the said (*G. G.*) his executors, administrators and assigns, one sorrel gelding, branded J. J. on the near shoulder, and now in my possession. To have and to hold the said gelding to the said (*G. G.*) his executors, administrators and assigns forever; and I the said (*J. J.*) for myself, my heirs, executors and administrators, the aforesaid sorrel gelding to the said (*G. G.*) his executors, administrators and assigns, against me the said (*J. J.*) my executors and administrators, and against all and every person and persons whomsoever, shall and will warrant and forever defend by these presents. *Provided nevertheless*, that in case I the said (*J. J.*) shall pay and satisfy to the said (*G. G.*) or to his executors, administrators or assigns, the sum of £25 current money, with interest for the same, on or before the —— day of —— next ensuing, then this Bill of Sale and every matter and thing therein expressed shall be void and of none effect, it being the true intent and meaning thereof, that the said sorrel gelding is mortgaged by me the said (*J. J.*) to secure to the said (*G. G.*) the payment of the money aforesaid.

In witness whereof, I the said (*J. J.*) have hereunto set my hand and affixed my seal, the —— day of ——, ——.

J. J. Seal.

Signed, sealed and delivered in presence of }
A. B.
C. D.

Form of the Acknowledgement of the foregoing.

Maryland, —— County, To Wit:
On this —— day of ——, ——, before me one of the

justices of the peace in and for said county, appears (*Y. Y.*) and acknowledges the foregoing writing to be his act and deed, according to the true intent and meaning thereof, and the act of Assembly in such case made and provided.

Witness my hand. J. S.

BONDS.

A *Bond* or obligation, is a deed whereby the obligor obliges himself, his heirs, executors and administrators, to pay a certain sum of money to another at a day appointed. If this be all, the bond is called a single one; but there is generally a condition added, that if the obligor does some particular act, the obligation shall be void, or else shall remain in full force: as payment of rent; performance of covenants in a deed; or repayment of a principal sum of money borrowed of the obligee, with interest, which principal sum is usually one half of the penal sum specified in the bond. In case this condition is not performed, the bond becomes forfeited or absolute at law, and charges the obligor while living; and after his death the obligation descends upon his heir, who on defect of personal assets is bound to discharge it, provided he has real assets by descents as a recompense. So that it may be called, though not a *direct*, yet a *collateral* charge upon the lands. *Blackstone's Commentaries.*

If the condition of a bond is impossible at the time of making it, or be to do a thing contrary to some rule of law that is merely positive, or be uncertain, or insensible, the condition alone is void, and the bond shall stand single, and unconditional; for it is the folly of the obligor to enter into such an obligation, from which he can never be released. If it be to do a thing that is *malum in se*, the obligation itself is void; for the whole is an unlawful contract, and the obligee shall take no advantage from such a transaction. And if the condition be impossible at the time of making it, or afterwards becomes impossible by the act of God, the act of law, or the obligee himself, there the penalty of the obligation is saved; for no prudence or foresight of the obligor could guard against such a contingency. *ibid.*

Bonds bearing more than *six per cent.* interest for

one year on the loan of money, or more than *eight per cent.* per year on the loan of tobacco, or other goods, wares, or merchandises, are void. 1704, *c.* 69, *s.* 1, 2.

Whoever, upon any contract to be made, shall take, accept and receive, by ways or means of any corrupt bargain, loan, exchange, chievezance, shift, or interest of any wares, merchandises, or other thing or means, or by any covin, instrument, or deceitful conveyance, for the forbearance or giving day of one whole year, of and for their money, tobacco, and other goods and commodities, above the sum of money or quantity of tobacco aforesaid, shall forfeit and lose for every such offence the treble value of the money, tobacco, goods and commodities so lent, bargained, sold, exchanged and shifted as aforesaid; one half of said fine to go to the state, the other half to him or them that shall sue for the same. *ibid. s.* 3.

A bond usually consists of two parts, to wit: the *obligation*, whereby the party is bound; and the *condition*, which expresses what sum is to be paid, or act performed, and to whom, in what manner, and when.

Form of a single Bond for the payment of money.

Know all men by these presents, that I (*J. J.*) do owe and stand justly indebted to (*G. G.*) in the sum of £15 current money of Maryland, to be paid to the said (*G. G.*) his executors, administrators or assigns, on or before the —— day of —— next; for the payment whereof, I bind myself, my heirs, executors and administrators by these presents. In testimony whereof, I have hereunto set my hand and affixed my seal, the —— day of ——, ——.

Signed and sealed in presence of A. B. } J. J. Seal.

Form of a Bond, with a Condition for the payment of money.

Know all men by these presents, That I —— of —— in the State of Maryland, am held and firmly bound to —— of —— in the just sum of £200 current money, to be paid to the said —— or his certain attorney, executors,

administrators, or assigns; for which payment well and truly to be made, I bind myself, my heirs, executors and administrators, firmly by these presents, sealed with my seal. Dated the —— day of ——, in the year of our Lord ——.

The condition of this obligation is such, that if the above bounden ——, his heirs, executors or administrators, do and shall well and truly pay, or cause to be paid, unto the above named ——, his executors, administrators, or assigns, the just and full sum of £100 current money, with legal interest for the same, on the —— day of —— next ensuing the date of the above written obligation, then this obligation shall be void and of none effect, else of full force and virtue in law.

——, Seal.

Signed, sealed and delivered in presence of }
A. B.
C. D.

A Bond, with a Condition for the payment of money from two to one.

Know all men by these presents, that we [*J. S. & J. M.*] both of —— county and state of Maryland, *tanners*, are held and firmly bound to [*P. P.*] of the county and state aforesaid, *hatter*, in the sum of £200 current money of Maryland, to be paid, &c. &c.

The condition of this obligation is such, that if the above bounden [*J. S. & J. M.*] their or either of their executors or administrators shall well and truly pay or cause to be paid to the above named [*P. P.*] his executors, administrators, or assigns, the just and full sum of £100 current money of Maryland, with legal interest for the same, on the —— day of ——, ensuing the date of the above written obligation, then, &c. &c.

Form of a Bond for the payment of money with Security.

Know all men by these presents, that we [*I. S*] of —— county and state of Maryland, *saddler*, and [*J. L.*] of the

city of Baltimore, and state aforesaid, *merchant*, are held and firmly bound to [*H. M.*] of —— county and state aforesaid in the sum of £200 current money of Maryland, to be paid to the said [*H. M.*] or his certain attorney, executors, administrators, or assigns; for which payment well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated this —— day of ——, in the year of our Lord ——.

The condition of this obligation is such, that if the above bounden [*J. S.*] or his heirs, executors, or administrators, do and shall well and truly pay or cause to be paid to the above named [*H. M.*] his executors, administrators, or assigns, the just and full sum of £100 current money of Maryland, with legal interest for the same, on the —— day of —— ensuing the date of the above written obligation, then this obligation to be void and of none effect, else of full force and virtue in law.

J. S. Seal.
J. L. Seal.

Signed, sealed, and delivered in presence of
H. K.
H. S.

Form of a Bond to indemnify one who is Security for another.

Know all men by these presents, that I (*J. S.*) of —— county and state of Maryland, am held and firmly bound to [*M. B.*] of —— in the state aforesaid, in the sum of £500, &c. &c.

The condition of the above obligation is such, that if the above bounden (*J. S.*) his heirs, executors, &c. shall and do from time to time, and at all times hereafter, well and sufficiently save, defend, keep harmless, and indemnify the said (*M. B.*) his heirs, executors and administrators, and his and their goods and chattels, lands and tenements, of and from any obligation or writing entered into by the said (*M. B.*) for a certain (*W. D.*) formerly of —— county and state aforesaid, and of and from all actions, suits, payments, costs, charges and damages, for or by reason of the said obligation or other writings he the said (*M. B.*) may have entered into, and

been bound by, for the said *(W. D.)* then this obligation to be void and of none effect, else of full force and virtue in law.

J. S. Seal.

Signed, sealed and delivered in presence of }
N. W.
V. S.

Form of a Bond to indemnify a Special Bail, by security.

Know all men, &c. *(as before.)*

The condition of this obligation is such, that whereas the above named *(A. B.)* at the instance and request of the above bounden *(E. F.)* became special bail for the said *(E. F.)* in a certain action of debt *(trespass, or otherwise)* at the suit of *(G. H.)* in —— county court, as by reference to the records of said court had will fully appear: If, therefore, the said *(E. F.)* shall appear according to the condition of the said obligation as the law requires, and also shall and do from time to time and at all times hereafter, well and sufficiently save, defend, keep harmless and indemnify the said *(A. B.)* his heirs, executors and administrators, and his and their goods and chattels, lands and tenements, of and from said special bail, and of and from all actions, suits, payments, costs, charges and damages, for or by reason of the said special bail; then, &c.

Signed, sealed and delivered in presence of } E. F. Seal. L. F. Seal.
A. B.
C. D.

[*Here L. F. is security for E. F. in the Bond.*]

Form of a Bond of Indemnity and Counter-Security, to the Securities of an Executor or Administrator of a deceased person.

Know all men by these presents, that we *(A. B. & C. D.)* both of —— County and state of Maryland, *farmers*, are held and firmly bound to *(J. H. & J. S.)* of the County and state aforesaid, *merchants*, in the sum of

£1000 current money of Maryland, to be paid to the said (*J. H. & J. S.*) or to their certain attorney, executors administrators or assigns; for which payment well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated this —— day of ——, in the year of our Lord ——.

The condition of this obligation is such, that whereas the above named (*J. H. & J. S.*) at the instance and request of the above bounden (*A. B. executor or administrator*) of the late (*D. B.*) of the county aforesaid, deceased, became bound together with the said (*A. B.*) to the state of Maryland in the sum of £800 current money for (*the performance of the office of executor or administrator of A. B. deceased*) the due administration of all the goods, chattels and credits of (*D. B.*) deceased, as by the said bonds or obligation and condition thereof remaining in the register of wills' office in —— county reference thereto being had will more fully appear: If, therefore, the said (*A. B. executor or administrator*) as aforesaid shall and do well and truly administer all and singular the goods, chattels and credits of (D. B.) deceased, according to law, and do and perform all and every other act, matter and thing on the part of the said (A. B.) to be done and performed according to the true intent and meaning of the condition of the said recited obligation, and also shall and do from time to time, and at all times hereafter, well and sufficiently save, defend, keep harmless and indemnify the said (*J. H. & J. S.*) their heirs, executors and administrators, and their and each of their goods and chattels, lands and tenements, of and from the said obligation and the condition thereof, and of and from all actions, suits, payments, costs, charges and damages by reason thereof, then this obligation to be void and of none effect, else of full force and virtue in law.

Signed, sealed and delivered in presence of } A. B. Seal. C. D. Seal.
E. F.
G. H.

Form of a Bond to refund.

Know all men, &c.

The condition of the above obligation is such, that whereas (*A. B.*) the father of the above named (*B. B.*) by

his last Will and Testament, bearing date the —— day of ——, ——, and recorded in the Register's office in —— county, did give and bequeath to the said (B. B.) a Legacy of £100 current money *(or one equal 1-8th part of his personal estate,)* as by reference to said Will will appear. Now if any part, or the whole of said Legacy shall at any time, after payment thereof to the said (B. B.) appear to be wanting to discharge any debt or debts, Legacy or Legacies, which the said (*W. S.*) the executor shall be wanting, or not have other assets wherewith to pay, then and and in such case, if the said (B. B.) his heirs, executors or administrators, shall and do refund, or return the said Legacy, or such part thereof as shall appear to be necessary for the payment of said debts, or the payment of said Legacy or Legacies, then this obligation to be void and of none effect, or else of full force and virtue in law.

Signed, sealed and delivered in presence of } B. B. Seal. L. G. Seal.
E. F.
G. H.

Form of a Bond to Convey Land.

Know all men, &c.

The condition of this obligation is such, that if the above bounden (*A. C.*) shall and do, on or before the —— day of —— next ensuing the date hereof, make, execute and acknowledge such act, deed or conveyance, which shall be needful for conveying, assuring, transferring, establishing and confirming unto the said (*C. D.*) his heirs and assigns, a good, pure, absolute estate, in fee simple, clear of all incumbrances of in and to the plantation with the improvements and appurtenances thereto belonging, whereon the said (*A. C.*) now dwelleth, and the same being part of a tract of land called ——, containing the quantity of —— acres of land, *more or less;* and on the same day aforesaid, to give to the said (*C. D.*) free and full possession of the said plantation, and of every part thereof; then this obligation to be void and of none effect, else of full force and virtue in law.

Signed, sealed and delivered in presence of } A. C. Seal.
E. F.
G. H.

Form of a Bond for the performance of a Contract.

Know all men, &c.

The condition of this obligation is such, that if the above bounden (*A. B.*) shall and do, on or before the —— day of —— next ensuing the date hereof, deliver or cause to be delivered to the said (*C. D.*) his heirs, executors, administrators or assigns, at the plantation of the said (*C. D.*) near —— the quantity of three thousand good and sufficient chesnut rails, of the length of at least 11 feet, and of sufficient substance for making post fencing; then this obligation to be void and of none effect, else of full force and virtue in law.

Signed, sealed and delivered in presence of } A. B. Seal,
E. F.
G. H.

[*For other Bonds, see the different heads in this book.*]

Bonds, (except those given to the state) are not good and pleadable after the principal debtor and creditor have both been dead twelve years, or the debt or thing in action above twelve years standing. 1715, *c.* 23, *s.* 6.

But there is a saving to all persons that are under the impediments of infancy, coverture, insanity of mind, imprisonment, or being beyond the sea, of the full benefit of a bond, for the space of five years after the impediment is removed. *ibid.*

No county clerk can issue more than one writ on any bonds, where the principal and securities reside in the same county, and fees are to be charged accordingly. 1747, *c.* 23, *s.* 7.

But this shall not extend, or be construed to extend, to any action or suit where the plaintiff shall give directions to any attorney or attornies to commence several actions, or where a titling or titlings shall be sent to the said office or offices for the suing of several writs on one and the same bond. *ibid. s.* 9.

Where the principal and sureties live in separate counties, separate process may issue from the general court, but only one writ if they reside in the same county, the fees to be charged accordingly. *ibid. s.* 8.

In actions for the penalty of a bond, &c. the jury may, under the direction of the court, on the plea of payment or performance, find by verdict what money or tobacco is due to the plaintiff, whereupon judgement shall be entered for the penalty, to be released on payment of the sum due and interest and costs. 1785, *c.* 80, *s.* 13.

Actions on administration and testamentary bonds must be brought within twelve years. 1729, *c.* 24, *s.* 21. But there is a saving to infants, &c. of the benefit of such bonds, within six years after their coming of age. *ibid. s.* 22.

BOUNDARIES.

On petition of any landholder for a commission to examine evidences to prove the bounds of his land, or other lands whereon the same may depend, &c. the county court may grant a commission to four substantial freeholders in the county, no way related to the parties, nor interested in the land, any three or two of whom, (being first sworn duly and impartially to examine and certify such evidence,) may summon all such evidences as shall be nominated by the petitioner, or others concerned, to appear before them at a day appointed, upon the land, and shall examine all such evidences upon oath concerning the bounds thereof, and reduce such evidence into writing in presence of all the parties concerned there present, and return the same to the county court to be recorded. 1723, *c.* 8, *s.* 2.

All examinations so taken shall be good as if taken according to the rules and practice in chancery, any defect in form, &c. notwithstanding. *ibid. s.* 3.

The commissioners so appointed shall affix public notice at the parish church where the land lies, intimating the time and intention of their meeting, three Sundays at least before their meeting, and the like notice shall likewise be put up at the most public places of the county twenty days before such meeting. *ibid. s.* 4.

Where any person known to be interested lives out of the county, a like notice shall be affixed at the church door of the parish wherein such party resides, forty days before such meeting. *ibid.*

The commissioners shall return a certificate of such notice having been given, together with the examination of the witnesses. *ibid.*

And the commissioners and evidences shall have the same allowance as justices and evidences in the county court, to be levied in the same manner as officers' fees.

No person shall, on any pretence, cut down or destroy any boundary tree of his own or any other person's land, though it should stand within his own land, under the penalty of 5000lbs. of tobacco. 1722, *c.* 8, *s.* 2.

Any person presuming without lawful authority, to bound any tree, or to set up other boundaries for his own or other lands, in lieu of any original boundary, without giving notice to all persons concerned therein, of the time and place proposed for setting up such boundary, or who, (if they do not appear) shall not take with him four substantial freeholders to be present thereat, shall forfeit on every conviction 5000lbs. of tobacco, *ibid. s.* 3.

In all such prosecutions, the attorney-general, &c. shall be as particular as possible in describing the place or lands affected by setting up or destroying such boundaries. *ibid. s.* 4.

The commissioners under the act for marking and bounding of lands may summon and compel the attendance of witnesses to prove boundaries, which are desired to be perpetuated, and may take depositions, and return them, with their proceedings, which shall be as good evidence as if a commission for that purpose had issued under the act of 1723, *c.* 8. 1793, *c.* 70, *s.* 2.

The act to establish a mode to perpetuate testimony does not extend to proving the boundaries of land or to alter the law for that purpose. 1779, *c.* 8, *s.* 4.

The surveyor may insert in any certificate any boundary, artificial or natural, as being at the end of the distance expressed, provided he shall actually measure such distance. 1781, *c.* 20, *s.* 14.

In case the length of the line expressed in such certificate shall not reach the boundary, and the line shall not have been actually run, on caveat against grant issuing on such survey, the same shall be void, so far as that the land which is excluded by running from the end of the course and distance to the end of the next course and distance, or to the next boundary, if any, shall be liable to be affected as vacancy. *ibid.*

Form of a Petition to the Justices of a County Court for a Commission to examine Evidences to prove the bounds of land, or other lands whereon the same may depend, &c.

To the Honorable the Justices of —— County Court, the Petition of (A. B.) *respectfully sheweth;*

That your petitioner is seized or possessed in his own right (*or in right of another, as the case may be*) of a tract of land called *Sandy Level*, lying in the county aforesaid, the bounds whereof are lost, or in a precarious situation: Your petitioner therefore prays that your Honors will grant him a Commission to prove and perpetuate the bounds of the said tract of land agreeably to the act of Assembly in such case made and provided: And your petitioner, as in duty bound, will pray, &c.

A. B.

Form of a Commission to prove Boundaries.

—— County, To Wit:

The State of Maryland to Messrs. (*A. B. C. D. E. F. & G. H.*) of —— county, gentlemen, greeting: Whereas (*A. B.*) by his petition to the justices of our county court, begun and held at the Court-house in and for said county on the —— day of ——, in the year ——, set forth that he was seized and possessed of a tract of land called *Sandy Level*, lying in the county aforesaid, the boundaries of which are lost or in a precarious situation, and thereby prayed a commission to prove and perpetuate the memory of the said land whereon the same may depend or relate: These are therefore to empower you, or any three or two of you, after having first taken an oath before the said county court, or some magistrate of the said county, as directed by the act of Assembly, entitled "An act for the ease of the inhabitants in examining evidences relating to the bounds of lands, and in the manner

(*L. S.*)

of obtaining injunctions;" and also giving the several notices required and directed by the said act of Assembly to be given, to issue summonses for all such evidences as shall be to you nominated by the said petitioner or other person concerned, to appear before you at a certain day, to be by you appointed, upon the said land, and to examine all such evidences upon their corporal oaths, to be administered by you, touching their knowledge concerning the several bounds of the said land, and carefully to reduce what such evidences shall declare into writing in the presence of all the parties concerned that shall be there present; and also return a certificate, as well of your having given the notice aforesaid as of the examination of the witnesses aforesaid, with this commission, under your hands and seals, to the justices of our said court, that the same may be recorded, and so forth. Witness (*W. C.*) Esquire, chief justice of our said court, the —— day of ——, ——.

W. R. Clerk.

Issued the —— day of ——, ——.

Form of an Oath to be administered by a Justice of the Peace (or by the County Court issuing the Commission) to the Commissioners before they act.

—— County, To Wit:

On the —— day of ——, ——, (*A. B. C. D. E. F. & G. H.*) Commissioners named in the annexed commission, appeared before me, a justice of the peace for said county, and severally made oath on the holy Evangely of Almighty God, that they would duly and impartially examine and certify the evidences taken in virtue of said commission, agreeably to the act of Assembly in such case made and provided. Witness my hand.

J. S.

Form of an Advertisement to be stuck up by the Commissioners at the Parish Church Door, and other places.

Pursuant to the directions of a commission issued by

(A. B.) and to us directed by the Justices of —— County Court, to prove and perpetuate the memory of the bounds of a tract of land called *Sandy Level*, we purpose to meet on the said land the —— day of —— next, in order to proceed in the execution of the said Commission, as thereby we are required and directed.

A. B.
C. D.
E. F.
G. H.
} Commissioners.

(May 3d, 1805.)

Form of an Oath to be administered to an Evidence, by the Commissioners.

The testimony which you shall give relative to the bounds of a tract of land called *Sandy Level*, lying in —— county and state of Maryland, whereof *(A. B.)* is possessed, shall be the truth, the whole truth, and nothing but the truth; so help you God.

Sworn before *(the Commissioners.)*

Form of the Commissioners' Return.

MARYLAND, —— COUNTY, TO WIT:

We the subscribers, commissioners named in the commission hereto annexed, do hereby certify, that after having qualified to execute the same commission according to the act of Assembly in such case made and provided, as by the certificate also annexed appears, we did cause to be affixed one advertisement at the parish church-door of the hundred in which the said land mentioned in the said commission lies; one other at the court-house door of —— county; one other at ——, and one other at ——; a copy whereof here follows, to wit:

[*Here insert the advertisement at full length.*]

—— County, *(May 22d, 1805)*. Agreeably to the advertisement aforesaid, we the commissioners aforesaid did meet on the said land, and took the following depositions in the presence of all parties then and there present, to wit;

D. D. aged, &c. being first duly sworn on, &c. deposeth and saith, &c.

D. D. *(Deponent must sign.)*

Sworn to and subscribed by the said *(D. D.)* in the presence of us *(A. B. C. D. E. F. & G. H. the Commissioners).*

BOUNDING (AND MARKING) LANDS.

Any person seized of lands held under courses and distances only, as to any of the lines thereof, (whether courses and distances only are mentioned in the grant or deed, or whether by the loss of boundaries called for the person seized is confined to course and distance,) and any person seized of the reversion or remainder on an estate for the life or lives therein, may apply by petition in writing to the county court for a commission to mark and bound such land. The person applying must previously give two months notice of his intention, by advertisement set up at the court-house door of the county, and at the doors of the churches and other houses of public worship in the hundred where such land lies, naming or otherwise describing the land in the advertisement. He must also, thirty days before the meeting of the court, give notice in writing to the persons holding the adjoining lands, if residing thereon, or if absent, must leave such notice at their houses; if no person lives on the adjoining lands, notice must be given four successive weeks in the Baltimore and Annapolis newspapers: He must also give personal notice to the owner of the adjoining land, or to his agent or attorney, if known and in the state, thirty days before the meeting of the court. 1786, *c.* 33, *s.* 2.

Form of an Advertisement, notifying an intention to apply for a Commission to Mark and Bound Land; to be stuck up at the doors of the Churches and Court-house, or inserted in the newspapers as prescribed.

This is to give Notice,

That the subscriber intends to apply by petition in writing to the Honorable the Justices of the county court for —— county, to be held at —— on the —— day of —— next, for a commission to mark and bound all that tract or parcel of land *(or the reversion or remainder of land, as the case may be)* of which the subscriber is seized, lying and being in —— county and state of Maryland, known by the name of *The Mount*, whereof all persons in any wise concerned or interested are hereby desired to take notice.

A. B.

(April 1st, 1805.)

Form of a Written Notice, to be given to persons holding adjoining lands; or, in case of their absence, to be left at their houses.

Sir,

You will please to take notice, that I intend to apply by petition in writing to the honorable the justices of the county court for —— county, to be held at —— on the —— day of —— next, for a commission to mark and bound all that tract or parcel of land *(or the reversion or remainder of land, as the case may be)* of which I am seized, lying and being in —— county and state of Maryland, known

by the name of *The Mount*, and which is adjoining to the lands on which you reside.

A. B.

To Mr. *(C. D.)*

(April 1st, 1805.)

Form of a Petition to the Justices of a County Court, for a Commission to Mark and Bound land.

To the Honorable the Justices of —— County Court, the Petition of (A. B.) *respectfully sheweth ;*

That your petitioner is seized of land (*or the reversion or remainder of land, as the case may be*) held under courses and distances only (*or the boundaries of which are lost, so that the person is confined to course and distance, as the case may be*) lying in the county aforesaid, and called *The Mount*, the bounds whereof are lost or in a precarious situation : Your petitioner therefore prays that your Honors will grant him a commission to mark and bound the said tract of land agreeably to the act of Assembly in such case made and provided ; and your petitioner, as in duty bound, will pray, &c.

A. B.

The Court, on proof being made to their satisfaction, that advertisements were duly set up or notice given, or on the other persons interested appearing, may issue a commission to any five or three persons, agreed on by all parties, empowering them to mark and bound the land therein mentioned, according to law. 1786, *c.* 33, *s.* 2.

Form of a Commission for Marking and Bounding lands.

—— County, To Wit.

[*L. S.*] The State of Maryland to Messrs. *(A. B. C. D. E. F. G. H. & I. K.)* of —— county, gentlemen, greeting : Whereas [*A. B.*] of ——, by his petition to the justices of our county court, begun and held at the Court-House in

——, in and for the said county, on the —— day of ——, in the year ——, did set forth that he is seized of a tract of land lying in the county aforesaid, called *The Mount*, held under courses and distances only as to some of the lines thereof, which he is desirous to have marked and bounded, and thereby prayed a commission to mark and bound the whole of the said tract of land according to the directions of the act of assembly, entitled "An act for marking and bounding lands." And it hath been proved to the satisfaction of the justices of our said court, that the requisite notice to entitle him to such commissions had been duly given: These are therefore to authorise, empower and require you, or any three of you, after having given thirty days notice at the least, and taken the oath or affirmation (as the case may be) by law directed, to cause the surveyor of —— county, or such other skilful person as you shall think fit to appoint, he and his chain carriers having first taken the oath or affirmation (as the case may be) prescribed by law, to survey as well the whole of the said tract of land as well as such other lands as you may think proper; and that you, or a majority of you, or the major part of such majority met concurring in opinion, according to the best of your skill and knowledge, mark and bound the whole of the said tract of land from the best information you shall be able to obtain agreeably to the true original location thereof, and return to the justices of our county court with all convenient speed, a certificate of such marked lines and boundaries agreeable to the act of assembly aforesaid, with this commission, in order that the same may be recorded, and so forth. Witness (*W. C.*) Esquire, chief justice of our said court, the —— day of ——, ——.

W. R. Clerk.

Issued the —— day of ——, ——.

If any of the persons interested should not agree upon commissioners, the court shall appoint three or five persons skilled in land affairs, not interested or related to either of the parties, to whom a commission shall issue. *ibid.*

Where divers persons hold separate parts of the same tract, they, or any of them, may have a commission to mark and bound the whole tract, and particular parts thereof. 1786, *c.* 33, *s.* 8.

A person holding a younger survey, and thereby inter-

ested in the location of interfering or neighboring elder surveys, shall have a commission to mark and bound such elder surveys, to have the same effect as if he had been seized thereof. *ibid.*

Provided such person shall give notice in writing to the person seized of such elder tract of his intention nine months before the petition, and the person seized of the elder tract shall have neglected to obtain a commission. *ibid.*

Where the same tract is held by different persons, and lies partly in one county and partly in another, a commission may be obtained to mark and bound the whole tract, and the particular part of the applicant. 1793, *c.* 70, *s.* 4.

When any tract shall lie partly in this state, and partly in an adjoining state, a citizen of Maryland or any other state may obtain a commission to mark and bound the part within this state. *ibid.*

Such commissions are to have the same effect as if the land had been wholly in one county, or in this state. *ibid.*

The Commissioners must cause advertisements to be set up at the door of the court-house, and at such other places they may deem effectual, notifying the time of their meeting, thirty days at least before the time of their meeting, and shall meet on the land to proceed in the execution of their commission agreeable to the notice given by them. 1786, *c.* 53, *s.* 3.

Form of an Advertisement to be ſtuck up at the Court-House door, &c.

Pursuant to the directions of a commission issued by (*A. B.*) and to us directed by the justices of —— county court, to mark and bound a tract of land called *The Mount*, we purpose to meet on the said land the —— day of —— next, in order to proceed in the execution of the said commission, as thereby we are required and directed.

A. B.
C. D.
E. F. } Commissioners.
G. H.
I. K.

(*May 3d*, 1805.)

Summonses for witnesses may issue out of the county court, or by the commissioners, or a majority of them, and witnesses summoned shall attend, and be subject to punishment for not attending, in the same manner as on summonses issued by, and returnable to, county courts; and the commissioners may cause the land mentioned in such commission, as well as any lands they may think proper, to be surveyed by the surveyor of the county, or such other skilful person as they may think fit to appoint, and may administer an oath to the surveyor, and to the chain-carriers. 1786, c. 33, s. 4.

Form of a Summons, to be issued by the Commissioners.

MARYLAND, —— COUNTY, TO WIT:

You are hereby commanded to summon (*A. B.*) to be and appear before us on the tract of land called *The Mount*, lying and being in —— county, to testify relative to the true original location of said tract of land. Hereof fail not, and make return hereon on the —— day of ——, ——; and have you then and there this precept. Given under our hands and seals this —— day of ——, ——.

(*The commissioners must sign.*)

To the Sheriff of said County.

Before any commissioner shall proceed in the execution of such commission, otherwise than by giving notice by advertisement and issuing summonses for witnesses, he shall take an oath or affirmation before some justice of the peace, or some other of the commissioners. 1786, c. 33, s. 3.

Form of a Commissioner's Oath.

—— COUNTY, TO WIT:

On the —— day of ——, ——, came [*A. B. or the whole five commissioners*] a commissioner named in the [*within, subjoined, or annexed*] commission and [*severally, if more than one commissioner appears*] made oath on the holy Evangely of Almighty God, that he [*or they*] will settle and adjust the location of the land mentioned in said commission, most agreeably to the true location thereof, according to the evidence and circumstances which shall be

offered or appear to him, [*or them*], without favor, affection, or partiality, according to the best of his experience and judgement, and will make a true return thereof.

Sworn before J. S.

Form of the Surveyor's Oath.

You (*A. B.*) do make oath on the holy Evangely of Almighty God, that you will execute your duty as surveyor faithfully and impartially, according to the best of your skill. Sworn before (*the commissioners.*)

Form of the Chain-Carrier's Oath.

You (*A. B.*) do make oath on the holy Evangely of Almighty God, that you will execute your duty as chain-carrier faithfully and impartially, according to the best of your skill.

Sworn before (*the commissioners.*)

[By 1793, c. 70, an affirmation made by any Quaker, Menonist, or Tunker, shall be as valid as an oath, in order to qualify him as a surveyor or chain-carrier.]

The commissioners shall administer an oath or affirmation to every witness.

Form of an Oath to be administered to a Witness.

You (*A. B.*) do make oath on the holy Evangely of Almighty God (*or solemnly affirm*) that the Evidence which you shall give to the commissioners now present in the matter depending in question, shall be the truth, the whole truth, and nothing but the truth; so help you God.

Sworn before (*the commissioners.*)

The commissioners, or any two or more of them, may adjourn from time to time as they may think necessary, and they, or the majority of them, or the major part of such majority met, concurring in opinion, may and shall cause the land mentioned in the commission to be mark-

ed in the lines where convenient, and shall mark or set up boundaries at the termination of the lines when course and distance only are given, according to their adjudication and adjustment of the location thereof, and return a certificate of such marked lines and boundaries to the court under their hands, which return shall be received and recorded in the records of land commissions and returns of such county, unless the court shall otherwise order because of ill-behaviour of the commissioners. 1786, *c.* 33, *s.* 4.

Form of the Commissioners' Return.

We the subscribers, being commissioners named in the annexed commission, do certify and return to the honorable the court of —— county, that by virtue of the said commission we did, on the —— day of ——, ——, cause advertisements in writing signed by us, to be set up at the court-house door of —— county, and at such other public places as we judged most effectual, notifying that we should meet on the lands mentioned in the said commission on the —— day of —— in the year aforesaid, and that we would then and there proceed in the execution of the said commission.

We do further certify and return, that before we proceeded in the execution of the said commission, otherwise than by giving notice as aforesaid and issuing summonses for witnesses, we severally took an oath or affirmation (*as the case may be*) before a justice of the peace for the county aforesaid, that is to say, (*A. B. & C. D.*) two of the said commissioners severally took an oath before [*J. S.*] a justice of the peace for said county, and [*E. F. & G. H. being Quakers*] severally took their affirmations, and [*I. K.*] took his oath before [*H. K.*] another justice of the peace for said county [*as the case may be*] "that he would settle and adjust the location of the land mentioned in the commission most agreeably to the true original location thereof, according to the evidences and circumstances which shall be offered or appear to him, without favor, affection, or partiality, according to the best of his experience and judgement, and would make a true return thereof."

We further certify and return, that after having taken the oath and affirmations as aforesaid, we did on the —— day of —— in the year aforesaid, appoint (*L. M.*) to be a surveyor for the execution of the said commission,

and did then and there administer a solemn affirmation to him, being a Quaker [*as the case may be*] "to execute his duty as surveyor faithfully and impartially, according to the best of his skill;" and that we did then and there appoint (*N. O. & P. Q.*) to be our chain-carriers, and did then and there administer an oath to (*N. O.*) and a solemn affirmation to [*P. Q. as the case may be*] he being one of the people called Menonists, "to execute their duty as chain-carriers, faithfully and impartially, according to the best of their skill:" And that we did on the execution of said commission administer an oath or affirmation to every witness that was examined, "that the evidence which such witness should give to the commissioners in the matter depending in question, should be the truth, the whole truth, and nothing but the truth."

We do further certify and return, that we did meet on the land mentioned in the said commission on the —— day of ——, in the year aforesaid, and did then and there proceed in the execution of the said commission, and did from that day adjourn from time to time until the —— day of ——, in the year aforesaid, and that we did cause the land mentioned in the said commission, and such other land as we thought proper, to be surveyed by [*L. M.*] our surveyor as aforesaid; and that we did then and there cause the said land mentioned in the said commission to be marked in the lines where convenient, and that we did mark or set up boundaries at the termination of the lines where course and distance only was given according to our adjudication and adjustment thereof: And that we did then and there and do hereby adjudge and determine the true original location of the land mentioned in the said commission to be as follows, and according to the plot hereunto annexed and by us subscribed:

Beginning at a stone marked [*A. N. E. L.*] now planted by us at the distance of five perches from the head of the stream of water passing through the said land in said commission mentioned, in a direction from the head of said stream North 26 degrees East, which beginning may be ascertained also by running from a stone as by us planted and marked (*B. N. E. L.*) South seventeen and an half degrees West forty perches; (*so the beginning may be described or further elucidated, as may be thought best*) and running from the aforesaid beginning (*A. N. E. L.*) with an allowance of —— degrees —— minutes variation on the original courses (*and so proceed with courses, distances, and boundaries as*

fixed by the commissioners, and conclude as follows) perches to the first place of beginning, containing —— acres and —— perches of land. Given under our hands and seals this —— day of ——, ——.

A. B. Seal.
C. D. Seal.
E. F. Seal.
G. H. Seal.
I. K. Seal.

The commissioners may apply to the county clerks for attachments against witnesses not attending. 1793, *c.* 70, *s.* 3.

The marking and bounding of land, and the record thereof, shall be conclusive evidence of the original location, both as to the direction and termination of the lines, in case no suit shall be brought within five years from the recording such return to call in question the adjudication. 1786, *c.* 33, *s.* 5.

Where the adjudication shall be confirmed by the verdict of a jury, it shall conclude to every intent and purpose between the same parties and those claiming under them. *ibid.*

Five years are allowed to infants and others, after the disability is removed, to commence suit. *ibid.*

The commissioners are not empowered to vary from the lines or boundaries at the termination of them fairly agreed on between the parties. *ibid. s.* 6.

Such agreement, and a plot thereof, may, by consent, be recorded, and shall have the same effect as if the location had been settled by commissioners. *ibid.*

Each commissioner shall be entitled to seven shillings and six-pence for every day he shall attend in the execution of the commission; the surveyor shall receive such *per diem* allowance as shall be adjudged by the commissioners, not exceeding fifteen shillings for every day he shall necessarily be employed; each chain-carrier shall be entitled to receive five shillings, and each witness shall be entitled to three shillings and nine pence, for each day they shall respectively attend, to be paid by the person at whose request the service shall be performed; and, if necessary, attachment of contempt shall be issued by the county court to compel such payment. *ibid. s.* 7.

Where the land, on the execution of a commission, is deficient in the quantity for which it was granted, or is partly taken away by an elder survey, the commissioners

shall, on the request of the party, cause any adjoining vacant land (not exceeding the said deficiency) to be surveyed, marked and bounded, and shall return with their proceedings a certificate thereof. *ibid. s.* 9.

On such certificate being recorded in the county records, and also in the records of patents in the land-office, the party shall be seized of an estate in fee in said lands. *ibid.*

When vacant land is so discovered, and is not requested to be applied to make good deficiency, the commissioners shall, if requested, award the pre-emption thereof, or a part thereof, to any proprietor of the lands adjoining. *ibid. s.* 10.

But the whole quantity to one proprietor is not to exceed fifty acres, unless his adjoining tract exceeds 1000 acres, in which case they may allow at the rate of five for every one hundred acres. *ibid.*

The person obtaining such pre-emption shall have six months to procure a warrant from the land-office to affect and secure the land, and on complying with the requisites, a grant shall issue therefor. *ibid.*

BRITISH STATUTES.

The inhabitants of Maryland are entitled to the benefit of such of the English statutes as existed at the time of their emigration, and which by experience, have been found applicable to their local and other circumstances, and of such others as have been since made in England or Great-Britain, and have been introduced, used and practised by the courts of law or equity. *Declaration of Rights, art.* 3.

The Governor shall not, under any pretence, exercise any power or prerogative by virtue of any law, statute, or custom, of England or Great-Britain. *Const. art.* 33.

Every provision, &c. in any British statute, introduced, used or practised under in this state, inconsistent with or repugnant to, any thing contained in the act for amending the laws concerning last wills, &c. is thereby repealed. 1798, No. 101, *s.* 2.

BURGLARY.

Burglary, or nocturnal house-breaking, has always been looked upon as a very heinous offence; not only because of the abundant terror that it naturally carries with it, but also as it is a forcible invasion and disturbance of that right of habitation, which every individual might acquire even in a state of nature; an invasion, which in such a state would be sure to be punished with death, unless the assailant were the stronger. But in civil society, the laws also come in to the assistance of the weaker party; and, besides that they leave him this natural right of killing the aggressor, if he can, they also protect and avenge him, in case the might of the assailant is too powerful. *Blackstone's Commentaries.*

The definition of a burglar, as given by Sir Edward Coke, is, "he that by night breaketh and entereth into a mansion-house, with intent to commit a felony." In this definition there are four things to be considered; the *time*, the *place*, the *manner*, and the *intent*.

1. The *time* must be by night, and not by day; for in the day time there is no burglary. As to what is reckoned night, and what day, for this purpose, antiently the day was accounted to begin only at sunrising, and to end immediately upon sunset; but the better opinion seems to be, that if there be day-light enough, begun or left, to discern a man's face withal, it is no burglary. But this does not extend to moonlight; for then many midnight burglaries would go unpunished: And besides, the malignity of the offence does not so properly arise from its being done in the dark, as at the dead of night, when all the creation, except beasts of prey, are at rest; when sleep has disarmed the owner, and rendered his castle defenceless. *ibid.*

2. As to the *place*. It must be, according to Sir Edward Coke's definition, in a *mansion*-house; and therefore to account for the reason why breaking open a church is burglary, as it undoubtedly is, he quaintly observes that it is the *mansion-house of God*. We may safely conclude, that the requisite of its being a *mansion-house* is only in the burglary of a private house. A house wherein a man sometimes resides, and which the owner hath left only for a short season, is the object of burglary, though no one be in it at the time of the fact committed. And if the barn, stable, or warehouse, be parcel of the mansion-house and within the same common fence, though not under the same

roof or contiguous, a burglary may be committed therein; for the capital house protects and privileges all its branches and appurtenants, if within the curtilage or home-stall. A chamber in a college, where any inhabitant hath a distinct property, is, to all other purposes as well as this, the mansion-house of the owner. So also is a room or lodging, in any private house, the mansion for the time being of the lodger, if the owner doth not himself dwell in the house, or if he and the lodger enter by different outward doors. But if the owner himself lies in the house, and hath but one outward door at which he and his lodgers enter, such lodgers seem only to be inmates, and all their apartments to be parcel of the one dwelling house of the owner. *ibid.*

3. As to the *manner* of committing burglary, there must be both a breaking and an entry to complete it. But they need not be both done at once; for, if a hole be broken one night, and the same breakers enter the next night through the same, they are burglars. There must in general be an actual breaking; a substantial and forcible irruption; as at least by breaking, or taking out the glass of, or otherwise opening a window; picking a lock, or opening it with a key; nay, by lifting up the latch of a door, or unlocking any other fastening which the owner has provided. But if a person leaves his doors or windows open, it is his own folly and negligence; and if a man enters therein, it is no burglary: Yet, if he afterwards unlocks an inner or chamber door, it is so. But to come down a chimney is held as a burglarious entry; for that is as much closed as the nature of things will permit. So also to knock at a door, and upon opening it to rush in, with a felonious intent; or, under pretence of taking lodgings, to fall upon the landlord and rob him. And so, if a servant opens and enters his master's chamber door with a felonious design; or if any other person lodging in the same house, or in a public inn, opens and enters another's door, with such evil intent, it is burglary. If the servant conspires with a robber, and lets him into the house by night, this is burglary in both. As for the entry, any the least degree of it, with any part of the body, or with an instrument held in the hand, is sufficient. The entry may be before the breaking as well as after, as where a person enters into the dwelling-house of another, either by day or by night, with intent to commit a felony, or being in such house, shall commit any felony; and shall in the

night break out of the same; this is declared to be burglary. *ibid.*

4. As to the *intent;* it is clear that such breaking and entry must be with a felonious intent, otherwise it is only a trespass. And it is the same, whether such intent be carried into execution, or only demonstrated by some attempt or overt-act, of which the jury is to judge. And therefore such a breach and entry of a house as has been described, by night, with intent to commit a robbery, a murder, a rape, or any other felony, is burglary; whether the thing be actually perpetrated or not. *ibid.*

Persons convicted of breaking into any shop, storehouse or ware-house, (and stealing from thence goods or merchandise to the value of five shillings,) though not contiguous to or used with a mansion-house, and their accessories, are to suffer death without benefit of clergy. 1729, *c.* 4, *s.* 3.

The same punishment is allotted for persons breaking into tobacco-houses, and stealing to the same amount; provided such tobacco-houses have been well secured by locks, &c. 1737, *c.* 2, *s.* 2, 3.

Form of a Warrant to apprehend a Burglar.

MARYLAND, —— COUNTY, TO WIT:

Whereas *(A. B.)* of said county hath this day made information and complaint on oath before me *(J. S.)* one of the justices of the peace for the state, in and for the county aforesaid, that on —— night, the dwelling house *(or any other house adjoining, wherein burglary may be committed)* of him the said *(A. B.)* at ——, in said county, was feloniously and burglariously broken open, and *(here state what)* of the goods and chattels of him the said *(A. B.)* feloniously and burglariously stolen, taken and carried away, and that he hath just cause to suspect, and doth suspect, that a certain *(C. D.)* of —— county, the same felony and burglary did commit: You are therefore hereby authorised and commanded forthwith to apprehend the said *(C. D.)* and bring him before me or some other justice of the peace in and for said county, to answer the same information and complaint, and further

to be dealt with according to law. Given under my hand and seal, this —— day of ——, ——.

J. S. Seal.

To A. F. Constable.

Form of a Commitment for Burglary.

MARYLAND, —— COUNTY, TO WIT:

You are hereby commanded to receive from *(A. F.)* Constable, the body of *(C. D.)* who is charged with having feloniously and burglariously broken open the *(house of A. B.)* and from thence —— of the goods and chattels of the said *(A. B.)* having stolen and carried away contrary to law; and him the said *(C. D.)* safe keep in your jail and custody, until he shall be thence delivered according to law. Hereof fail not. Given under my hand and seal, this —— day of ——, ——.

J. S. Seal.

To the Sheriff of said county.

CHAIN-CARRIERS.

No person shall act as a chain-carrier, unless he is sworn or affirmed to do his duty faithfully. 1782, *c.* 38, *s.* 3.

The sheriff or surveyor may administer such oath; and no surveyor shall execute any warrant from the land-office, or the general or any county court, unless the chain-carrier be first qualified as aforesaid; and it is the duty of every surveyor, diligently to observe the conduct of the chain-carriers, and to take care that they faithfully execute their duty. *ibid.*

Form of an Oath to be administered to a Chain-Carrier by a Sheriff or Surveyor.

You *(A. B.)* do make oath on the holy Evangely of Almighty God *(or solemnly affirm)* that you will, whilst acting as chain-carrier, faithfully, carefully, and impartially carry the chain: So help you God.

CHANCELLOR.

The Chancellor presides in the high court of Equity of Maryland. He is appointed by the governor by and with the advice and consent of the council; and holds his commission during good behavior. He must be a person of integrity and sound judgement in the law; and can only be removed for misbehavior on conviction in a court of law. He is the keeper of the great seal of the state which is affixed to all laws, commissions, grants, and other public testimonials. He must attest and annex the seal of the state to all public commissions and grants, except military and militia commissions. His oath of office, which is as follows, is administered to him by the Governor on delivering to him the great seal.

Form of the Chancellor's Oath.

I *(A. B.)* chancellor, do solemnly promise and swear, that, as chancellor, I will do equal right and justice according to law, equity, and good conscience, in every case in which I shall act as chancellor, freely without sale, fully without any denial, and speedily without delay, and will behave myself justly, honestly and faithfully, in the said office, according to the best of my knowledge and understanding; so help me God.

He is likewise obliged to swear or affirm, that he will not directly or indirectly, receive any fee or reward for doing the duties of his office but what is or shall be allowed by law, nor will directly or indirectly receive the profits, or any part of the profits, of any office held by any other person, and that he does not hold his office in trust, or for the benefit of any other person. The salary of the chancellor was first established by law in the year 1785, at £650 current money; but was increased in 1792 to £950; in 1797 (as chancellor and judge of the land-office) to £1125; and in 1798, to £1275. The two last additions to his salary were to continue to the 20th of October 1800; and at the session of the general assembly in November 1800, the salary of £1275 was further continued until the 20th day of October 1805.

The duties of the chancellor are very numerous; and the powers of the court in which he presides are extremely great. To enumerate them would occupy a

small volume; and the limits of this book have confined the compiler to a simple sketch on the subject.

The chancery court is intended to remedy those evils to which the law does not extend. The mode of procedure therein is by *filing a bill*, stating at large the grievances of the complainant; to which the defendant or defendants can be compelled to answer in a similar way upon their oaths. Commissions are granted for taking testimony in writing; and after all the evidence is before the chancellor, he decides according to justice and equity. The present Chancellor of Maryland, is *Alexander Contee Hanson*, Esquire; who resides at Annapolis, where the office of Register of the Chancery Court is kept under the superintendance of *Samuel Harvey Howard*, Esquire, the Register.

CHEAT.

Cheats may in general be described to be deceitful practices, in defrauding or endeavouring to defraud another of his known right, by means of some artful device, contrary to the plain rules of common honesty.

Form of a Warrant to apprehend a Cheat.

MARYLAND, —— COUNTY, TO WIT:

Whereas (*A. B.*) of said county hath this day made information and complaint on oath before me (*J. S.*) one of the justices of the peace for the state, in and for the county aforesaid, that on the —— day of ——, ——, a certain (*C. D.*) of —— county, did, by means of (*some device, trick, or false pretence*) cheat him the said (*A. B.*) out of one (*silver watch*) of the value of (*twenty dollars*); you are therefore hereby authorised and commanded forthwith to apprehend the said [*C. D.*] and bring him before me or some other justice of the peace in and for said county, to answer the same information and complaint, and further to be dealt with according to law. Given under my hand and seal, this —— day of ——, ——.

To J. B. Constable. J. S. Seal.

[A Commitment in this case the same as in burglary, except as to the *cause*, &c.]

CITIZENS.

All foreigners who emigrated and settled in the state of Maryland before the 22d of July, 1779, and who have continued and remained inhabitants thereof, and their descendants, shall be deemed, and are declared to have been, and to be, citizens of this state. 1797, c. 60.

COMMITMENT TO PRISON.

Persons apprehended for offences which are not bailable; and all persons who neglect to offer bail for offences which are bailable, must be committed.

Wheresoever a justice is empowered by any statute to bind a person over, or to cause him to do a certain thing, and such person being in his presence shall refuse to be bound, or to do such thing, the justice may commit him to the jail, to remain there till he shall comply.

A commitment must be in writing, signed by a justice of the peace, expressing his office or authority, and must be directed to the sheriff of the county, who is properly the keeper of the prison. It should contain the name and surname of the party committed, if known; if not known, then it may be sufficient to describe the person by his age, stature, complexion, color of his hair, and the like, and to add that he refused to tell his name. It ought to contain the cause, as for treason, or felony, or suspicion thereof; otherwise if it contain no cause at all, if the prisoner escape it is no offence. It ought also to contain the certainty of the cause; and, therefore, if it be for felony, it ought not to be generally for felony, but it must contain the special nature of the felony, briefly, as for felony, *for the death of such an one;* or for burglary, *in breaking the house of such an one:* And it must have an apt conclusion; as if it is for felony, to detain him till he be thence delivered by law, or by order of law, or by due course of law.

It is also to be observed, that a commitment grounded on an act of assembly, ought to be conformable to the method prescribed by it. And a difference is, where a man is committed as a criminal, and where only for contumacy; in the first case the commitiment must be *until discharged according* to law; but in the latter, *until he comply.* It

must likewise be under seal; contain the name of the county, and have a certain date of the year and day.

[*For forms of commitment, see the different heads in this book.*]

CONFESSION OF GUILT.

Confession is two fold, either *expressed* or *implied*.

An *express* confession is, where a person directly confesses the crime with which he is charged; which is the highest conviction that can be.

An *implied* confession is, where a defendant in a case not capital doth not directly own himself guilty, but in a manner admits it by yielding to mercy, and desiring to submit to a small fine; which submission the court may accept of if they think fit, without putting him to a direct confession.

All those who on their examination own themselves guilty of a felony alledged against them, and are charged in their *mittimus* with the felony so confessed, seem to be excluded from bail; for bail is only proper where it stands indifferent whether the party be guilty or innocent.

CONSTABLE.

The *Constable* is the proper officer to a justice of the peace, and bound to execute his warrants; and his office is of great antiquity. In Maryland, constables are appointed yearly by the levy courts of the several counties; and previously to their entering upon the discharge of the duties of their office, are obliged to take the following oath.

Form of the Constable's Oath.

I (*A. B.*) do swear, that I will faithfully and honestly serve in the office of constable for —— hundred in —— county, and will well and truly, according to my power, skill and knowledge, perform and execute the duties belonging to the office of Constable, so long as I shall continue in such office: So help me God.

The county clerk must signify the appointments of constables under his hand, and deliver them to the sheriff within five days after the appointment, who must, within ten days after the delivery, deliver the same to each person appointed, or leave it at his usual place of abode, under the penalty of twenty shillings to the clerk or sheriff neglecting, recoverable before a single magistrate, as in case of small debts; for the use of the county. 1752, *c.* 7, *s.* 2.

Whenever any person shall be appointed a constable by the proper court, and shall neglect to act according to such appointment, and shall not, within five days after notice of such appointment, qualify as constable, or within that time find a sufficient and proper person to qualify and act in his stead, he shall be fined by the court making the appointment not exceeding ten pounds current money. 1762, *c.* 40, *s.* 2.

Each constable is allowed 20lbs. of tobacco for every warrant, and 10lbs. of tobacco for every summons by him served, payable in tobacco or specie; Spanish dollars to be valued at seven shillings and six-pence each, and gold and silver in proportion, at the rate of twelve shillings and six-pence per hundred. 1780, *c.* 17, *s.* 1, 2.

If more than one constable be employed in executing precepts relating to one matter, the justices may direct what fee, not exceeding two shillings and sixpence, shall be paid to each. 1715, *c.* 15, *s.* 7.

The fees of constables are levyable by execution on the complainant, and must be allowed to the party recovering in his costs. *ibid.*

Warrants for small debts [under ten pounds] must be directed to some constable of a hundred, unless the suitor requests that it may be directed to some friend who will serve it *gratis*; but the suitor is nevertheless liable to pay the constable of the hundred where served, his just fee. 1719, *c.* 12, *s.* 4.

Every person prophanely cursing or swearing in the presence of a constable, is subject to a fine of two shillings and six pence for the first offence, and five shillings for every oath or curse thereafter. 1723, *c.* 16, *s.* 2.

Persons being drunk in the presence of a constable, or being convicted thereof, shall be fined five shillings for every offence. *ibid. s.* 3.

Constables are to be sworn up at every county court to the grand jury. 1730, *c.* 24, *s.* 21.

Constables on collecting fines, are to pay one half to the informer, and the other half to the sheriff of his county. 1777, *c.* 6, *s.* 1.

It is the duty of constables, to examine hawkers or pedlars, to require them to produce a licence, and on refusal or neglect when so required, to carry them before a justice of the peace, who will take recognizance with security from the person to appear at the succeeding court. 1784, *c.* 7, *s.* 6; *and c.* 37, *s.* 23.

Constables are exempt from attendance as jurors. 1715, *c.* 37, *s.* 4.

They are bound to suppress the tumultuous assembling of slaves; and may summon persons to assist them, who on refusal are liable to a fine of 100lbs. of tobacco; and all white persons present are bound to assist the constable under the penalty of 100lbs of tobacco. 1723, *c.* 15, *s.* 2, 3.

Constables must aid and assist the trustees of the poor. 1768, *c.* 29, *s.* 23.

On complaint made to them, constables may enter the house of any retailer, and there call for and inspect the measures used by him. 1784, *c.* 7, *s.* 10; *and c.* 37, *s.* 27.

Constables may be appointed by the wreck-master in Worcester county, to summon persons to assist vessels in distress. 1795, *c.* 82, *s.* 2.

If the constable is assaulted in the execution of his office, he is not obliged to give way; and if in the striving together, the constable kills the assailant, it is no felony; but if the constable is killed, it is construed premeditated murder.

All constables shall, before they proceed to discharge duties required by the act authorising and empowering them to serve and levy executions issued by a justice of the peace on judgements obtained for small debts out of court, [*see page 26 of this book*] give bond to the state of Maryland, with good and sufficient security, in the penalty of two hundred and fifty dollars, to be approved by the levy court of the county, for the due performance of the duties of a constable, and also the duties and trust reposed in them by virtue of law, whose duty it shall be to have the same filed or entered on record by their clerks. 1801, *c.* 62, *s.* 3.

Form of a Constable's Bond.

Know all men by these presents, that we [*J. B. & C. D.*] of —— county, are held and firmly bound to the state of Maryland, in the sum of two hundred and fifty dollars current money, to be paid to the state aforesaid, or its certain attorney; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents: Sealed with our seals, and dated the —— day of ——, in the year of our Lord ——.

The condition of the above obligation is such, that if the above bounden (*J. B.*) shall duly perform the duties of a constable, and also the duties and trust reposed in him by virtue of an act of Assembly entitled, "A supplement to an act, entitled, An act for regulating the mode of staying execution, and repealing the acts of assembly therein mentioned, and for other purposes," then the above obligation shall be void; else to be and remain in full force and virtue in law.

J. B. Seal.
C. D. Seal.

Signed, sealed and delivered in the presence of —— ——.

CONTRACTS.

A *contract* is defined to be, an agreement upon sufficient consideration, to do or not to do a particular thing

There arise three points to be contemplated in all contracts: 1. The *agreement:* 2. The *consideration:* and 3. The thing to be done or omitted.

First, as to the *agreement:* There must at least be two contracting parties, of sufficient ability to make a contract.

Secondly, as to the *consideration*: There must be some thing given in exchange, something that is mutual or reciprocal; and it must be a thing lawful in itself, or else the contract is void.

Thirdly, as to the thing agreed to be done or omitted;

This embraces the different species of contracts; such as sale, exchange, hiring, borrowing, debt, &c.

A consideration of some sort or other is absolutely necessary to the forming of a contract; and an agreement to do or pay any thing on one side, without any compensation on the other, is totally void in law; and a man cannot be compelled to perform it. As if one man promises to give another £100, here there is nothing contracted for or given on the one side, and therefore there is nothing binding on the other.

Contracts are either *express* or *implied*. *Express* contracts are where the terms of the agreement are openly uttered and avowed at the time of the making, as to deliver an oxen or ton load of timber, or to pay a stated price for certain goods. *Implied*, are such as reason and justice dictate, and which therefore the law presumes that every man undertakes to perform. As, if I employ a person to do any business for me, or perform any work; the law implies that I undertook, or contracted, to pay him as much as his labor deserves. If I take up wares from a tradesman, without any agreement of price, the law concludes that I contracted to pay their real value. And there is also one species of implied contracts, which runs through and is annexed to all other contracts, conditions, and covenants; viz: that if I fail in my part of the agreement, I shall pay the other party such damages as he has sustained by such my neglect or refusal. *Blackstone's Commentaries.*

[*See Articles of Agreement.*]

CONVEYANCING, &c.

Under this head it is proposed to treat of deeds, their acknowledgement, &c.

A *deed*, is a writing sealed and delivered by the parties. If a deed be made by more parties than one, there ought to be regularly as many copies of it as there are parties, and each should be cut or indented on the side, to tally or correspond with the other; which deed, so made, is called an indenture.

[By act of Assembly, 1794, it is declared that *indenting* is not necessary to the validity of any deed thereafter to be made.]

As to the *requisites* of a deed: The first is, that there

be persons able to contract and be contracted with for the purposes intended by the deed ; and also a thing or subject matter to be contracted for ; all which must be expressed by sufficient names.

A deed must be founded upon a good and sufficient consideration ; not upon an usurious contract, nor upon fraud or collusion, either to deceive purchasors *bona fide*, or just and lawful creditors ; any of which bad considerations will vacate the deed, and subject such persons as put the same in ure to forfeitures, and often to imprisonment. A deed made without any consideration, is, as it were, of no effect ; for it is construed to inure, or to be effectual, only to the use of the grantor himself. The consideration may be either a *good* or a *valuable* one : A good consideration is such as that of blood, or of natural love and affection, when a man grants an estate to a near relation ; being founded on motives of generosity, prudence and natural duty. A valuable consideration is such as money, marriage, or the like, which the law esteems an equivalent given for the grant ; and is therefore founded in motives of justice.

A deed must be *written* or *printed*, for it may be in any character or any language, but it must be upon paper or parchment ; for if it be written on stone, board, linen, leather, or the like, it is no deed.

The matter in a deed must be *legally* and *orderly* set forth, that is, there must be words sufficient to specify the agreement and bind the parties. As to the matter, the following order may be observed, to wit :

1. The *premises*, setting forth the number and names of the parties ; also, the recital, if any, of such deeds, agreements or matters of fact, as are necessary to explain the reasons upon which the present transaction is founded ; and herein likewise set down the consideration upon which the deed is made. And then follows the certainty of the grantor, grantee, and thing granted.

2. The *habendum*, which is properly to determine what estate or interest is granted by the deed ; though this may be performed, and sometimes is performed, in the premises.

3. The *tenendum*, which is now of very little use, and only kept in by custom. It was sometimes formerly used to signify the tenures by which the estate granted was to be holden.

4. The terms of stipulation, if any, upon which the

grant is made; the first of which is the *reddendum*, or reservation whereby the grantor doth create or reserve some new thing to himself; out of what he had before granted. Another of the terms upon which a grant may be made is a *condition*; which is a clause of contingency, on the happening of which the estate granted may be defeated.

5. The clause of *warranty*; whereby the grantor doth, for himself and his heirs, warrant and secure to the grantee the estate so granted.

6. *Covenants*, or conventions, which are clauses of agreement contained in a deed, whereby either party may stipulate for the truth of certain facts, or may bind himself to perform, or give, something to the other.

7. The *conclusion*, which mentions the execution and date of the deed.

It is requisite that the party, whose deed it is, should *sign* and *seal* it.

Form of a Deed of Bargain and Sale, from Bargainor to Bargainee.

This indenture made this —— day of ——, in the year of our Lord ——, between (*A.* B.) of —— county, in the state of Maryland, of the one part, and (*C. D.*) of the county and state aforesaid, of the other part, witnesseth, that the said (*A.* B.) for and in consideration of the sum of —— dollars current money of the United States, to him in hand paid by the said (C. D.) before the sealing and delivery of these presents, the receipt whereof he the said (*A.* B.) doth hereby acknowledge, and from every part and parcel thereof doth hereby acquit, exonerate and discharge the said (*C. D.*) his heirs, executors and administrators, he the said (*A.* B.) hath granted, bargained, sold, aliened, enfeoffed, and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff and confirm, unto the said (*C. D.*) his heirs and assigns, [*all or any part of*] that [*tract or parcel of land, &c.*] together with all and singular the buildings, improvements, woods, ways, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances, whatsoever thereunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof, and all the estate, right, title, and interest whatsoever, of him the said [A. B.] both at law and in equity, of, in, to, and out of, the said [*tract or parcel of*

land] and premises hereby bargained and sold, or meant, mentioned or intended hereby so to be, and every or any part and parcel thereof; to have and to hold the said *(tract or parcel of land)* so as aforesaid described, called ——, or by whatsoever name the same may be called, together with the buildings and appurtenances, and all and singular other the premises hereby bargained and sold, or meant, mentioned or intended hereby so to be, and every part and parcel thereof, with their and every of their appurtenances, unto the said [C. D.] his heirs and assigns, forever, and to and for no other use, intent or purpose whatsoever; and the said (A. B.) for himself, his heirs, executors, and administrators, doth hereby covenant, grant promise and agree, to and with the said (C. D.) his heirs, executors, administrators or assigns, that he the said (A. B.) and his heirs, the said *(tract or parcel of land)* and premises, hereby granted, bargained and sold, and every part and parcel thereof, with the appurtenances thereunto belonging, to him the said (C. D.) his heirs and assigns, against him the said (A. B.) and his heirs, and against all and every person or persons whatsoever claiming or to claim, any right, title or interest in and to the same, or any part thereof, shall and will hereafter warrant and forever defend by these presents.

[*Here covenant may be added for further assurances, in manner following.*]

And the said *(A. B.)* for himself, his heirs, executors and administrators, doth further covenant, grant, promise and agree, to and with the said *(C. D.)* his heirs, executors, administrators, and assigns, that he the said *(A. B.)* and his heirs, shall and will, at all times hereafter, whenever required thereto by the said *(C. D.)* his heirs or assigns, at the proper cost and expence of the said *(C. D.)* his heirs or assigns, make, do, execute, and acknowledge, all and every such further assurance or assurances, deed or deeds, conveyance or conveyances, devise or devises, in the law, as he the said *(C. D.)* his heirs or assigns, or his or their counsel learned in the law, may or shall advise, devise or require, for the more certain and effectual assuring, conveying and quieting, the possession of the said *(C. D.)* his heirs and assigns, of, in and to, the said *(tract or parcel of land)* and premises, with the appurtenances, forever.

In witness whereof the said *(A. B.)* hath hereunto sub-

scribed his name, and affixed his seal, the day and year first herein before written.

Signed, sealed and delivered in presence of } A. B. Seal.
E. F.
G. H.

—— *County, To Wit:*

Received, on the day of the date of the within deed, of and from the within named *(C. D.)* the sum of —— current money of the United States, being the consideration mentioned in the said deed.

Witness, A. B.
E. F.
G. H.

No manors, lands, tenements, or hereditaments, can pass by bargain or sale, nor any estate for above seven years, except the deed or conveyance be made by writing, sealed and acknowledged, and enrolled within six months from the date. 1715, *c.* 47, *s.* 8. By 1779, *c.* 10, *s.* 2, the said six months are declared to be calendar months.

Form of an Acknowledgement of a Deed, with Relinquishment of Dower.

Maryland, —— County, To Wit:

On this —— day of ——, in the year of our Lord ——, personally appears (A. B.) of —— county, being the party grantor above named, before me *(or us)* the subscriber *(or subscribers—a judge of the General Court, chief justice of a County Court, an associate justice, or two justices of the peace*)* and acknowledges the within deed or instrument of writing to be his act and deed, and the (*lands*) and premises therein mentioned, and thereby bargained and sold, to be the right and estate of the within named (*C. D.*) party grantee also therein named, his heirs and assigns, forever, according to the purport, true intent and meaning of the said deed or instrument of writing, and the acts of Assembly in such case made and provided. And now at the same time also personally appears (*M. B.*) wife of the said (*A. B.*) before *me (judge or justices)* as aforesaid, and acknowledges the said deed or instrument of writing to be her act and deed, and the (*lands*) and premises therein men-

tioned to be the right and estate of the within named (*C. D.*) his heirs and assigns, forever; and the said (*M. B.*) being by (*me, or us*) privately examined apart, from and out of the hearing of her husband, "whether she doth make her acknowledgement of the same willingly and freely, and without being induced thereto by fear or threats of, or ill usage by, her husband, or fear of his displeasure?" acknowledges that she doth make her acknowledgement of the same willingly and freely, and without being induced thereto by fear or threats of, or ill-usage by, her husband, or fear of his displeasure.

Taken and certified the day and year above written.

A. S:

[*If before two justices of the peace, both must sign.*]

Acknowledgements made as above, will bar a *feme covert*, whether named as grantor in the deed, or having only a right of dower.

* Acknowledgements of deeds may be made in the general court, or before a judge thereof; in the county courts where the lands lie; before the chief justice of a county court within his district; before an associate justice within his county; before two justices of the county where the land lies; before the court, or two justices of the county where the grantor lives, if remote from the general court or the county where the land lies, on transmitting a certificate of such acknowledgement by the clerk, under seal, to the county where the lands lie; and by letter of attorney sufficiently proved, where the grantor lives in another state, the acknowledgement to be in the same courts, &c. as in other cases. Acknowledgements of deeds in the mayor's court, or before two magistrates of the city of Annapolis, if the lands are within the precincts of that city, are good and available as if acknowledged before a judge of the general court, or justices of the county.

Form of Acknowledgement of a Deed in open court.

MARYLAND, —— COUNTY, TO WIT:

On this —— day of ——, in the year of our Lord ——, (*A. B.*) being party grantor mentioned in the aforegoing deed or instrument of writing, personally appears before the (*chief justice and associate justices of —— county court*) in

court judicially sitting, and now here in open court before the said (*justices*), acknowledges the said [C. D.] sealing deed or instrument of writing to be his act and deed, and the land and premises therein mentioned, and thereby [assigned and sold, to be the right and estate of [C. D.] party grantee, also therein mentioned, his heirs and assigns, forever, according to the purport, true intent and meaning of the said deed or instrument of writing.

In testimony, &c.

The certificate of examination and acknowledgement must be enrolled upon record.

The magistrates before whom the acknowledgements of *feme-coverts* are taken, must examine them privately, and out of the hearing of their husbands. [*See the words quoted in the form of acknowledgement with relinquishment of dower.*]

The acknowledgement and examination of any *feme-covert* residing out of the state, taken before the mayor of any corporation in Great-Britain or Ireland, or before one justice of the supreme court of any *province* or colony within his majesty's dominions, and certified, by indorsement on such deed, under the hand of such magistrate, and seal of the corporation or *colony* respectively, shall be good in law to bar such *feme-covert* of her right of inheritance or dower as the case may be. 1752, *c.* 8, *s.* 2; *and* 1766, *c.* 14, *s.* 6.

Deeds may be acknowledged by a non-resident of the state by letter of attorney, properly proved, in the general court, or before two justices of the county court. 1766, *c.* 14, *s.* 4.

Deeds made by residents out of the United States, must be acknowledged within eighteen months after the time of execution; and if executed by a resident out of the state, but within the United States, they must be acknowledged within six months after the time of execution. 1798, *c.* 103.

No estate of inheritance or freehold, or declaration or limitation of use, or any estate for above seven years, shall take effect, unless the deed, &c. is acknowledged in the general court, or before one of the justices thereof, or in the county court, or before two justices of the county where the lands lie, and be enrolled in the records of the same county or the general court, as the case may be, within six calendar months after the date. 1776, *c.* 14, *s.* 2; *and* 1779, *c.* 10.

Deeds acknowledged before a judge of the general court may be enrolled in the records of the general court, or in the county where the lands lie; and deeds acknowledged in the county where the lands lie may be enrolled in the records of the said county, or in those of the general court. 1785, *c.* 9, *s.* 4, 5.

Deeds enrolled in the general court, may on application of the party claiming under them, be transmitted, with a certificate of such enrolment, signed and sealed by the clerk, to the clerk of the county where the lands lie, who shall enrol such deed and certificate in the records of his county. *ibid. s.* 6.

Deeds enrolled in the courts of the counties where the lands lie may, in like manner, be transmitted to, and enrolled in, the general court. *ibid.*

When a deed is enrolled in a county court, the clerk shall enter in a record book the substance of such deed, to wit, the date, names, &c. and shall note the day of the enrolment, and sign his name thereto. *ibid. s.* 7.

A copy of such record entry must be transmitted annually in May, to the clerk of the general court, to be recorded, and the transcript to be safely kept. *ibid.*

The chancellor can pass a decree for the recording a deed which has been fairly executed and not recorded, (where the grantor or his representatives reside out of the State) on application to the court of chancery by bill or petition of the party claiming under such deed. 1791, *c.* 79, *s.* 2.

Provision is likewise made by act of Assembly, 1792, *c.* 41, *s.* 3, for recording deeds, by the chancellor's decree, which may be executed and not recorded; where application is made to him by petition of the party to whom the deed is executed.

Any person seized of an estate tail in possession, remainder or reversion, may convey the same in the manner in which persons seized of estates in fee-simple may convey. 1782, *c.* 23, *s.* 2.

The chancellor can compel a conveyance from infants, idiots, lunatics, &c. of lands mortgaged, charged with the payment of money or tobacco, and liable to a decree for sale, or bound by agreement to convey, on petition of the party claiming such conveyance. 1773, *c.* 1, *s.* 1, 2, 3.

By 1778, *c.* 22, such infants are bound by convey-

ances made by guardians, in pursuance of the order and direction of the court of chancery.

By 1791, *c.* 79, on application by any representative of a person deceased, who shall have contracted for the sale and conveyance of lands, &c. and not performed the same, and shall have devised or left them to descend to persons under age, &c. if the said representatives are immediately interested in having a specific performance, the chancellor may decree the same.

The chancellor can order the attorney-general to make a conveyance to persons claiming it, where a person having contracted in writing for the sale of any real estate, shall die seized, intestate, and without heirs of the whole or the half blood; the person claiming applying by petition to the chancellor, stating such contract. 1785, *c.* 78, *s.* 1.

Suits can be brought in the court of chancery against persons residing out of the state to compel a conveyance. 1787, *c.* 30, *s.* 2, 3.

The chancellor can decree a conveyance to persons claiming under a contract with any persons, their heirs, devisees, or representatives, not residing in the state. 1792, *c.* 41, *s.* 2.

Where a person having contracted for the sale of lands, &c. and not having conveyed them, dies without leaving an heir known of and capable of inheriting his real estate, the chancellor can decree that the legal title and estate be vested in the person claiming in virtue of such contract, on his petitioning for that purpose. *ibid. s.* 4, 5.

Trustees appointed by the chancellor can make a good conveyance where an equitable interest is purchased under a decree from the court of chancery. 1794, *c.* 60, *s.* 4, 5, 7, 10.

Conveyances by guardians, trustees, or committees, under a decree for partition, are declared to be valid. *ibid. s.* 8.

Deeds or patents are to be granted by the chancellor for lands purchased from the agents, or other persons authorised, for the state. 1795, *c.* 6, *s.* 3.

Form of the Acknowledgement of a Deed of Bargain and Sale, without Relinquishment of Dower.

MARYLAND, To WIT:

On this —— day of ——, in the year of our Lord ——, personally appears *(A. B.)* of —— county, party grantor mentioned in the within deed or instrument of writing, before *(me, or us)* the subscriber *(or subscribers, chief judge, justice or justices)* of the said state *(for the general court. of a district court, associate justice of a county court, or two justices of the peace of the said state for —— county)* and acknowledges the said within deed or instrument of writing to be his act and deed, and the *(land)* and premises therein mentioned, and thereby bargained and sold, to be the right and estate of *(C. D.)* party grantee, also therein mentioned, his heirs and assigns, forever, according to the purport, true intent and meaning, of the said deed or instrument of writing, and the acts of Assembly in such case made and provided.

Acknowledged before and certified by

A. S.
or
J. S.
H. K.

Form of a Deed of Bargain and Sale, including a Letter of Attorney to Acknowledge the same.

This indenture made this —— day of ——, ——, between *(A. B.)* of *(the city of Paris, in the empire of France, banker)* of the one part, and *(C. D.)* of —— county, in the state of Maryland, one of the United States of America, of the other part, witnesseth, that the said *(A. B.)* for and in consideration of the sum of ——, to him in hand paid by the said *(C. D.)* before the sealing and delivery of these presents, the receipt whereof he the said *(A. B.)* doth hereby acknowledge, hath granted, &c. &c. to have and to hold, &c. &c. And the said *(A. B.)* doth hereby constitute and appoint *(J. C. & R. L.)* of ——, jointly and severally, his attorney and attornies, authoris-

ing them, or either of them, to acknowledge this deed for and as the act and deed of the said [*A. B.*] before any court, judge or justices, in the state of Maryland according to the laws of that state in such cases made and provided.

In witness whereof, &c.

Another form of a Letter of Attorney, to be included in a Deed.

And this indenture further witnesseth, that the said *(A. B.)* hath constituted and appointed, and doth hereby constitute and appoint ——, of ——, and ——, of ——, jointly and severally, his attorney and attornies, with full power to appear for him, and in his name, and as his act and deed, to acknowledge this indenture before any court, judge or justice, or any other person or persons, having lawful authority by the laws of the State of Maryland, or of any other of the United States of America, or elsewhere, to take the said acknowledgement, in order that the said indenture may be recorded according to law.

In witness whereof, &c.

Form of the Acknowledgement of a Deed by Attorney, in virtue of a Letter of Attorney.

MARYLAND, TO WIT:

On this —— day of ——, ——, before *(me or us, a judge, associate justice, or two justices of the peace)* of the State of Maryland, for the *(general or county court, or for —— county)* appears *(J. C. & R. L.)* named in the foregoing and annexed power of attorney, (the execution whereof hath been duly proved before me,) and by virtue and in pursuance of the authority thereby given, do acknowledge the annexed deed or instrument of writing to be the respective act and deed of *(A. B. & C. D.)* parties therein named, according to the true intent and meaning

thereof, and of the act of Assembly in such case made and provided.

Acknowledged before

A. S.
or
J. S.
H. K.

Form of the acknowledgement of a Deed by an Attorney, in virtue of a Letter of Attorney included in a Deed.

MARYLAND, TO WIT:

[*As before*] (*J. C. & R. L.*) of ——, named in the power of attorney contained in the foregoing indenture (the execution whereof hath been duly proved before me,) and by virtue of the said power of attorney contained in the said indenture, acknowledges the said indenture for and in the name of, and as the act and deed of, the above and therein named (*A. B.*) in order that the same may be recorded acording to law.

Form of the Acknowledgement of a Deed by a *Feme-Covert*, residing out of the State of Maryland, but a resident of the United States, or of Great-Britain, &c.

——, TO WIT:

On this —— day of ——, in the year of our Lord ——, personally appears (*C. C.*) of ——, wife of (*J. C.*) the party grantor within mentioned, before me the subscriber, mayor of ——, (*or one of the justices of the supreme or colonial court of* ——, *or governor, or chief officer of* ——) and acknowledges the within deed or instrument of writing to be her act and deed, and the lands and premises therein mentioned to be the right and estate of the within named (*C. D.*) his heirs and assigns; and the said (*C. C.*) being by me privately examined apart from and out of the

hearing of her husband, "whether she doth make her acknowledgement of the same willingly and freely, and without being induced thereto by fear or threats of, or ill usage by, her husband, or fear of his displeasure?" acknowledges that she doth make her acknowledgement of the same willingly and freely, and without being induced thereto by fear or threats of, or ill usage by, her husband, or fear of his displeasure.

In testimony whereof I hereunto subscribe my name, and affix my seal, &c. the day and year above written.

W. B.

Form of a Deed, to be given by an Executor for Real Estate, agreeably to his Testator's directions.

This indenture made this —— day of ——, in the year of our Lord ——, between (A. B.) executor of the last will and testament of (E. F.) late of —— county, deceased, of the one part, and (C. D.) of ——, of the other part, witnesseth, that whereas the said [E. F.] deceased, by his last will and testament, bearing date the —— day of ——, and recorded in the office of the register of wills in —— county, as will appear by reference thereto being had, did authorise and empower [A. B.] his executor, to dispose of and convey his estate for the purposes expressed in his said will: Now this indenture witnesseth, that the said [A. B.] executor as aforesaid, as well by virtue of the power and authority to him given as aforesaid, as in consideration of the sum of ——, to him in hand paid by the said [C. D.] the receipt whereof he doth hereby acknowledge, hath granted, bargained and sold, and doth hereby, in said capacity, grant, bargain and sell, convey and confirm, unto him the said (C. D.) his heirs and assigns forever, [*here describe the lands, by name, &c.*] to have and to hold the same, with all the privileges and appurtenances thereunto belonging, to him the said (C. D.) his heirs and assigns, forever; and the said [A. B.] doth hereby, in the capacity aforesaid, covenant with the said [C. D.] his heirs and assigns, that the said E. F. died seized of the premises; that he the said A. B. was duly authorised by the said will to make sale thereof, and that

it was sold for the purposes therein expressed; that he gave public notice thereof, according to the directions of the testator, and that the said C. D. was the highest bidder for the said premises, and the same was thereupon struck off to him for the sum aforesaid, at a public vendue held *(on the land, or at any particular house, or place)* on the —— day of ——, ——; and the said A. B. doth further, in the capacity aforesaid, covenant to and with the said C. D. his heirs and assigns, that the premises are free of all incumbrances, and that he the said A. B. will warrant, secure and defend the same, to him the said C. D. his heirs and assigns, against the lawful claims and demands of all persons.

In witness whereof, &c.

Form of a Deed of Bargain and Sale from a Mortgagee and Mortgagor to a Purchaser.

This indenture of three parts, made the —— day of ——, in the year of our Lord ——, between [*A. B.*] of ——, of the first part, (*C. D.*) of ——, of the second part, and [*E. F.*] of ——, of the third part. Whereas the [*tract or parcel of land*] and premises, herein after mentioned to be hereby bargained and sold, are and stand limitted and assured unto, and to the use of the said [A. B.] his heirs and assigns, by way of mortgage, for securing the principal sum of ——, and interest; and whereas there now remains due and owing to the said [A. B.] upon and by virtue of his said mortgage, the said principal sum of —— only, all interest for the same up to the day of the date of these presents having been fully paid and discharged, as the said [A. B.] doth hereby admit and acknowledge. Now this indenture witnesseth, that for and in consideration of the sum of ——, current money of the United States, to him the said [A. B.] (in satisfaction and discharge of the said sum of ——, due and owing to him as aforesaid, upon and by virtue of his said security,) in hand well and truly paid by the said (*E. F.*) at or before the sealing and delivery of these presents, at the request and by the direction and appointment of the said (*C. D.*) (testified by his being a party to and sealing and delivering these presents,) and the sum of

—— current money of the United States, to the said (C. D.) in hand also paid by the said (E. F.) at or before the sealing and delivery of these presents, the receipt of which said several sums of —— and —— current money of the United states, to them the said (A. B. & C. D.) respectively paid as aforesaid, they the said [A. B. & C. D.] do hereby respectively confess and acknowledge, and thereof and therefrom, and of and from every part and parcel thereof, do respectively acquit, release, and forever discharge, the said [E. F.] his heirs, executors, and administrators, by these presents, he the said [A. B.] (at the request and by the direction and appointment of the said [C. D.] testified as aforesaid,) hath bargained and sold, and by these presents doth bargain and sell; and the said C. D. hath granted, bargained, sold and confirmed, and by these presents doth bargain, grant, sell, and confirm, unto the said E. F. his heirs and assigns, all that (*tract or parcel of land, &c.*) together with all and singular the ways, waters, water-courses, emoluments, advantages, rights, privileges, and appurtenances, to the said [*tract or parcel of land*] and premises, belonging, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof, and all the estate, right, title, interest, use, trust, possessions, property, benefit, equity of redemption, claim and demand whatsoever, both at law and in equity, of them the said [A. B. & C. D.] and each of them, of, in, to and out of the said [*tract or parcel of land*] and premises, hereby bargained and sold, or meant, mentioned, or intended hereby so to be, and every or any part or parcel thereof; to have and to hold the said [*tract or parcel of land*] and premises, hereby bargained and sold, or meant, mentioned, or intended hereby so to be; and every part and parcel thereof, with their and every of their appurtenances, unto the said E. F. his heirs and assigns, to the only proper use and behoof of him the said E. F. his heirs and assigns, forever, and to and for no other use, intent or purpose whatsoever.

[*Here covenant may be added, that the mortgagee hath done no act to incumber, in manner following.*]

And the said A. B. for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree, to and with the said E. F. his executors, administrators and assigns, that he the said A. B. hath not at any time heretofore made, done, executed or committed, or

wittingly or willingly suffered any act, deed, matter or thing whatsoever, whereby or by means whereof the said hereby *(assigned)* premises, or any part thereof, are, is, shall or may be impeached, charged, affected or incumbered, in title, charge, estate, or otherwise howsoever.

In witness whereof, &c.

Form of a Deed by a Collector to a Purchaser of Land, sold for the payment of Taxes.

This indenture made this —— day of ——, in the year of our Lord ——, between L. B. collector of —— county, in the state of Maryland, of the one part, and G. C. of the county and state aforesaid, of the other part, witnesseth. Whereas in virtue of an act of the general Assembly of Maryland, entitled, "an act for the more effectual collection of the county charges in the several counties of this state," a tract or parcel of land, called ——, lying and being in the county aforesaid, became chargeable as the property of E. F. for the payment of the sum of —— current money, for the county charges of the said county, and the collector of the county aforesaid not finding any personal property in the said county liable for, or chargeable with, the payment of the same, the said collector did afterwards, to wit, on the —— day of —— in the year——, return to the commissioners of the tax for the said county, at their annual [*or adjourned*] meeting, a list of the said tract or parcel of land, and the amount of the tax thereon due, together with the name of the said E. F. as chargeable with the payment of the same, whereupon the said commissioners of the tax of the said county, caused an advertisement, expressing the name of the said tract or parcel of land, and the amount of the tax thereon due, together with the name of the said E. F. as chargeable for the same, to be inserted once per week during four weeks from the —— day of ——, in the year of our Lord ——, in [*a Baltimore newspaper, and a newspaper of the county, or most convenient to the county*] notifying, that unless the county charges due on the land aforesaid should be paid to the collector of the said county within thirty days after the publication thereof, the land so charged as afore-

said, or such part thereof as might be necessary to raise the sum due thereon, should be sold to the highest bidder for the payment of the same. And whereas the said sum of —— current money, the county charges of the county aforesaid, not being paid at the end of the said thirty days after publication of the notice aforesaid, to wit, on the—— day of ——, in the year aforesaid, the commissioners of the tax of the said county did direct the said *L. B.* collector as aforesaid, after twenty days previous notice at the court-house door, and at the most public places in the said county, to sell to the highest bidder the said tract or parcel of land, [*or such part or parcel of the said tract or parcel of land, as might be sufficient to discharge the said tax thereon due,*] and the same, when sold, to transfer, by deed of bargain and sale, to the purchaser thereof: [*If it is a lot of ground, and the commissioners were of opinion that it would not admit of division without injury, then say* the said lot or parcel of ground, which, in the opinion of the said commissioners of the tax, would not admit of division, without material injury to the said E. F. the owner thereof, and the same when sold, *&c.*] And whereas, in virtue of the authority aforesaid, so as aforesaid given by the said commissioners of the tax, the said L. B. collector aforesaid, after twenty days previous notice at the court-house door, and at the most public places in the county aforesaid, did, on the —— day of ——, in the year ——, expose to public sale to the highest bidder, *(fifteen acres of the said tract or parcel of land called ——, beginning for the same at, &c.)* and at which said sale the herein before named G. C. became the highest bidder, and purchaser of the said *(fifteen acres of land, being part of the said tract or parcel of land)* for the sum of —— current money, and hath since paid the said purchase money to the said collector, and is now desirous of obtaining a title to the said premises in consequence thereof. Now this indenture witnesseth, that for and in consideration of the premises, and of the sum of five dollars current money of the United States, to the said L. B. collector as aforesaid, in hand paid, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged; the said L. B. collector as aforesaid, hath granted, bargained and sold, and by these presents doth grant, bargain and sell, unto the said G. C. his heirs and assigns, the said *(fifteen acres of land, being part of the tract or parcel of land aforesaid)* so as aforesaid exposed to sale in virtue of the authority

from the commissioners of the tax of the said county, with the appurtenances thereunto belonging; to have and to hold the same *(fifteen acres of land, being part of the tract or parcel of land aforesaid,)* with the appurtenances, unto the said G. C. his heirs and assigns, to the only proper use and behoof of him the said G. C. his heirs and assigns, forever.

In witness whereof, &c.

[*This must be acknowledged and recorded as other deeds.*]

Form of a Deed by the Chancellor, for land sold by the Agent of the State.

This indenture, made, &c. between the honorable A. C. H. esquire, chancellor, acting on behalf of the state of Maryland, of the one part, and A. B of —— county, of the other part. Whereas C. D. esquire, agent for the state of Maryland, on the —— day of ——, in the year of our Lord ——, pursuant to law, exposed to sale lot No. ——, situate in —— county, late the property of ——, and a certain E. F. became the purchaser thereof, and gave bond to the said state in the sum of —— current money, as appears by a certificate of the said sale, which was on the —— day of ——, in the year ——, lodged in the land-office of the western shore, where it has since remained without caveat agreeably to law: And whereas it appears by an assignment on the said certificate, bearing date the —— day of ——, in the year ——, that the said E. F. for a valuable consideration to him paid by the said A. B. did assign all his right and title to the said lot of land abovementioned, and herein described, to the said A. B. and requested that a deed might pass to him for the same, and it appearing that the said purchase money for the said lot of land hath been fully paid and satisfied by the said A. B. as by the agent's receipt, endorsed on the said certificate and bond, appears, the said A. C. H. esquire, as chancellor aforesaid, in pursuance of the act of Assembly in such case made and provided, hath agreed to execute these presents. Now this indenture witnesseth, that the said state of Maryland, by the said A. C. H. esquire, as chancellor aforesaid, for and in consideration of the premises and in virtue of the act of Assembly aforesaid, hath granted, released, confirmed, and transferred, and by these presents doth grant, release, confirm and transfer unto the said A. B. his heirs and as-

signs, forever, the aforesaid lot No. ——, situate in —— county aforesaid, late the property of the said ——, beginning, &c. [*as by a certificate of survey thereof lodged in the said land-office, may more fully appear.*] together with the appurtenances, and all the right, title and estate of the said state of Maryland, in law and equity, of in and to the said lot of land, and also with all and singular the privileges, appendances and appurtenances, thereto belonging, or in any wise appertaining; to have and to hold the said lot of land, and premises, with the appurtenances, unto the said A. B. his heirs and assigns, forever.

In witness whereof the said A. C. H. on behalf of the said state of Maryland, according to the act of Assembly aforesaid, hath hereunto set his hand and seal, the day and year herein first before written.

A. C. H. chancellor. Seal.

Signed, sealed and delivered in the presence of T. D.

[*The above need not be acknowledged.*]

Form of a Deed of Gift of Lands, &c.

This indenture made this —— day of ——, in the year of our Lord ——, between A. B. of ——, of the one part, and T. B. [*son of the said A. B.*] of the other part, witnesseth, that the said A. B. as well for and in consideration of the natural love and affection which he the said A. B. hath and beareth unto the said T. B. as also for the better maintenance, support, livelihood, and preferment, of him the said T. B. hath given, granted, aliened, enfeoffed and confirmed, and by these presents doth give, grant, alien, enfeoff, and confirm, unto the said T. B. his heirs and assigns, all that [*tract of land, &c.*] together with all and singular the houses, buildings, advantages, emoluments, hereditaments, and appurtenances whatsoever, to the said tract of land and premises, hereby mentioned, or intended to be granted and confirmed unto the said T. B. as aforesaid, or any part or parcel thereof, belonging or in any wise appertaining, or therewithal commonly held, used, occupied or enjoyed, or accepted, reputed, taken or known, as part or parcel of, or belonging to the same, and the reversion and reversions, remainder and remainders, rents issues and profits, of all and singular the said premises with their appurtenances, and all the estate, right, title, interest, property, claim and

demand whatsoever, of him the said A. B. of, in and to the said tract of land, and premises, and of, in and to every part and parcel thereof, with their and every of their appurtenances; to have and to hold the said tract of land, and all and singular other the premises hereby granted and confirmed or mentioned, or intended so to be with their and every of their appurtenances, unto the said T. B. his heirs and assigns, to the only proper use and behoof of him the said T. B. his heirs and assigns, forever; and the said A. B. for himself, his heirs, executors and administrators, doth covenant, grant and agree, to and with the said T. B. his heirs and assigns, by these presents, that he the said T. B. his heirs and assigns, shall, and lawfully may, from time to time, and at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy, the said tract of land, and premises, hereby granted and confirmed, or mentioned or intended to be hereby granted and confirmed, with the appurtenances thereunto belonging, free, clear, and fully discharged, or well and sufficiently saved, kept harmless and indemnified, of, from, and against, all former and other gifts, grants, bargains, sales, jointures, feoffments, dowers, estate, entails, rents, rent charges, arrearages of rent, judgements, executions, and of, from and against, all former and other titles, troubles, charges and incumbrances whatsoever, had, done, or suffered, or to be had, made, done or suffered, by him the said A. B. his heirs or assigns, or any other person or persons, lawfully claiming or to claim, by, from, or under him, them or any of them.

In witness whereof, &c.

The foregoing deed must be acknowledged and recorded as other deeds; but if the deed contains goods and chattels, and the donor keeps possession, the deed must be recorded in the county records within twenty days. *See act of Assembly*, 1729, *c.* 8, *s.* 5, 6.

Form of a Deed of Partition.

This indenture, of (*four*) parts, made and concluded the —— day of ——, in the year of our Lord ——, by and between A. B. of ——, of one part, C. D. of ——, of another part, E. F. of ——, of another part, and G. H. of ——, of the other part, witnesseth, That whereas they, the said

A. B. C. D. E. F. and G. H. are seized in fee-simple, and have and hold as tenants in common, in equal shares, &c. [*here describe the estate to be divided.*] And whereas the said parties have concluded to hold and enjoy their respective parts thereof in severalty; it is therefore covenanted, granted and agreed, by and between all and every of the said parties for himself (*and herself,*) and for his (*her*) and their heirs, executors and administrators, and they do hereby severally and respectively covenant, grant, and agree to, and with the others, their several and respective heirs and assigns, that a partition of the same shall be and is hereby made and determined, in manner following: That is to say, 1st. That he the said A. B. his heirs and assigns, shall and may from henceforth have, hold, possess and enjoy, in severalty, &c. [*here describe the part to be set off to A. B.*] and the said C. D. E. F. and G. H. for themselves, their heirs, executors and administrators, do by these presents grant, release and confirm, the same to the said A. B. his heirs and assigns, forever, as and for the said A. B.'s full share, part and proportion, of, in and to the said, &c. to have and to hold the same, with all the privileges and appurtenances thereof, to him the said A. B. his heirs and assigns, forever, in severalty as aforesaid, and to his and their only use and behoof, forever; and the said C. D. E. F. and G. H. do severally, by these presents, for themselves, and their heirs, executors and administrators, covenant and grant to and with the said A. B. his heirs, executors, administrators and assigns, that he and they shall and may, from henceforth forever, peaceably and quietly have, hold, use, occupy, possess and enjoy the same free and discharged of all right, title, interest, claim and demand whatsoever, of the said C. D. E. F. and G. H. or either of them, or of their heirs or assigns, or of any person or persons claiming from, by or under them, or any of them. 2d. That the said C. D. his heirs and assigns, shall and may from henceforth have, hold, possess and enjoy, in severalty, [*here describe the part to be set off to C. D.*] and the said A. B. E. F. and G. H. for themselves, &c. [*here go on as before in the release to, and covenant with, A. B.*] 3d. That the said E. F. his heirs and assigns, shall and may from henceforth have, hold, possess, and enjoy, in severalty, [*here describe the part to be set off to E. F.*] and the said A. B. C. D. and G. H. for themselves, &c. [*here go on as before in the release to, and covenant with, A. B.*] 4th. That the said G. H. his heirs and as-

signs, shall and may from henceforth have, hold, possess and enjoy, in severalty, [*here describe the part to be set off to G. H.*] and the said A. B. C. D. and E. F. for themselves, &c. [*here go on as before in the release to, and covenant with, A. B.*]

In witness whereof the said A. B. C. D. E. F. and G. H. (and also C. B. wife of the said A. B. and S. F. wife of the said E. F. in token of their free consent hereto,) have hereunto interchangeably set their hands and seals, the day and year above written.

Form of a Deed from a Sheriff to the purchaser of Property taken and sold under *fieri facias*.

This indenture, made this —— day of ——, in the year of our Lord ——, between G. C. esquire, sheriff of —— county, of the one part, and A. B. of —— county, ——, of the other part, witnesseth. Whereas on the —— day of ——, in the year of our Lord ——, a certain writ of the State of Maryand of *fieri facias*, did issue forth out of —— court for ——, to the said sheriff of —— county directed, reciting that whereas at a —— court, begun and held at ——, on the —— of ——, in the year of our Lord ——, a certain C. D. by the judgement of the said court, recovered against a certain E. F. late of —— county, ——, *otherwise called, &c.* as well the sum of [*recite the writ to the mandatory part thereof,*] the said sheriff was therefore commanded, that of the goods and chattels, lands and tenements, of the said E. F. being in his bailiwick, he should cause to be made and levied the *(debt)*, damages, costs and charges aforesaid, and that he should have those sums of money before the said —— court, to be held at ——, on the —— of —— then next, to render unto the said C. D. the *(debt,)* damages, costs and charges aforesaid, and that the said sheriff should also have then and there that writ: And whereas also the said writ came to the hands of the said sheriff, and in pursuance of the command therein contained the said sheriff laid the same upon *(part of)* a tract of land of him the said E. F. called and known by the name of ——, lying and being in —— county aforesaid, and contained within the courses and distances following; that is to say, (*enter the courses* :) And

whereas also, after due notice being given of the same, the said sheriff did, on the —— day of ——, in the year of our Lord ——, expose the said (*part of*) a tract of land, so as aforesaid taken in execution on the said writ, to public sale to the highest bidder, (*if there were no bidders, and the land was afterwards sold under a venditioni exponas then say,*) but there appearing no person or persons who would bid for the same, the said sheriff, to wit, the said G. C. esquire, did afterwards, that is to say, on the said —— of ——, in the year last aforesaid, return to the said —— court, that by virtue of the said writ to him directed for that purpose, he had taken of the lands and tenements of the said E. F. being in his bailiwick (*part of*) a tract of land called ——, lying and being in —— county aforesaid, which remained in the custody of him the said sheriff unsold for want of buyers, so that he could not have those sums of money before the said —— court at the day aforesaid, as by the said writ he was commanded: And whereas also, on the —— day of ——, in the year of our Lord ——, a certain other writ of the said state of Maryland, of *venditioni exponas*, did issue forth out of the said —— court, to the said sheriff of —— county directed, reciting the premises as herein before set forth, whereby the said sheriff was commanded, that the said (*part of*) a tract of land, so as aforesaid taken, he expose to sale, and the money therefrom arising he should have before the said —— court, to be held at ——, on the —— of —— then next, to render unto the said C. D. the (*debt*) damages, costs and charges aforesaid, and all such costs as had accrued on the writ of *fieri facias* aforesaid, and that he should have then and there that writ, &c. And whereas also the said last mentioned writ came to the hands of the said sheriff, and in pursuance of the command therein contained, the said sheriff, after due notice being given, did, on the —— day of ——, in the year of our Lord ——, expose to public sale to the highest bidder, the said (*part of*) a tract of land aforesaid, and thereat the herein before named A. B. became the highest bidder and purchaser of the said (*part of*) a tract of land, for the sum of —— current money, and hath since paid the said purchase money to the said sheriff, and is now desirous of obtaining a title to the said (*part of*) a tract of land in consequence thereof. Now this indenture witnesseth, that for and in consideration of the premises, and of the sum of five dollars current money of the Uni-

ted States to the said G. C. esquire, sheriff as aforesaid, in hand paid, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said G. C. esquire, sheriff as aforesaid, hath granted, bargained and sold, and by these presents doth grant, bargain and sell, unto him the said A. B. his heirs and assigns, the said *(part of)* a tract of land so as aforesaid taken on the writ of *fieri facias* aforesaid, and so as aforesaid exposed to sale in virtue of the said writ of *venditioni exponas*, with the appurtenances thereto belonging; to have and to hold the same *(part of)* a tract of land, with the appurtenances, unto the said A. B. his heirs and assigns, to the only proper use and behoof of him the said A. B. his heirs and assigns, forever.

In witness whereof the said G. C. esquire, sheriff as aforesaid, hath hereunto set his hand, and affixed his seal, the day and year first herein before written.

G. C. Seal.

Signed, sealed and delivered in presence of }

[*The foregoing deed must be acknowledged like other deeds, except that the sheriff's wife need not relinquish dower, and agreeably to law recorded.*]

Another form of a Deed by a Sheriff to the Purchaser of Land, taken and sold under *fieri facias*.

[*If the recital of the judgement is after the mandatory part of the fieri facias, instead of* "reciting that whereas at a —— court," *&c. say*] commanding him the said sheriff, that of the goods and chattels, lands and tenements, of C. D. late of —— county, ——, *(otherwise called C. D. &c.)* being in his bailiwick, he should cause to be made and levied, as well the sum of, &c. *(reciting the words of the writ.)*

Form of a Deed for setting over Prisoners and Writs, between late and present Sheriff.

This indenture, made this —— day of ——, in the year of

our Lord ——, betwen L. B. esquire, late sheriff of —— county, in the state of Maryland, of the one part, and G. C. esquire, now sheriff of the said county, of the other part. Whereas the said G. C. hath been duly elected, and hath obtained a commission as sheriff of the said county, to succeed the said L. B. in the said office of sheriff of the county aforesaid. Now this indenture witnesseth, that the said L. B. hath delivered and set over unto the said G. C. the following writs; that is to say, a writ of *capias ad satisfaciendum*, issued out of, and returnable to, —— court, against A. B. to satisfy unto C. D. the sum of —— current money, debt, and sum of ——, costs of suit, together with the body of the said A. B. a writ of *capias ad respondendum*, issued out of, and returnable to, —— court against C. D. to answer unto A. B. in a plea of trespass on the case, &c. another writ of, &c. a writ of *fieri facias* issued, &c. against the goods, &c. of A. B. to render unto E. F. the sum of ——: a writ of *scire facias*, issued, &c. to make known unto I. K. that he shew cause why execution should not issue against him at suit of A. B. &c. together with the bodies of J. H. G. W. &c. &c. committed to the jail of the said county, &c.

In witness whereof, &c.

Form of a Deed by a Trustee appointed by the Court of Chancery to sell an Estate, to the Purchaser of the said Estate, or a part thereof.

This indenture, made this —— day of ——, in the year of our Lord ——, between R. N. of —— county, in the state of Maryland, of the one part, and A. B of —— county, and state aforesaid, of the other part. Whereas by a decree of the chancery court of the state aforesaid, bearing date the —— day of ——, in the year ——, the above named R. N. was appointed a trustee, and authorised and empowered to sell and dispose of the real estate of C. D. late of —— county, deceased, for the payment of his debts; that in pursuance of the said decree, the said R. N. did, on the —— day of ——, in the year ——, sell and dispose of, to the above named A. B. *(part of a tract of land, as the case may be)* at and for the sum of —— current money: And whereas the purchase-money for the

said *(part of a tract)* of land, and premises, hath been fully paid and satisfied, and the said R. N. is authorised by the said decree to execute a conveyance for the same, and to comply with the terms of the said decree, the said R. N. hath agreed to execute these presents. Now this indenture witnesseth, that the said R. N. in consideration of the above recited premises, and also of *(one dollar)* current money of the United States, to him in hand paid by the said A. B. the receipt whereof is hereby acknowledged, and himself therewith to be paid, hath granted, bargained, sold, released, alienied, enfeoffed and confirmed, and by these presents doth grant, bargain, sell, release, alien, enfeoff and confirm, unto the said A. B. his heirs and assigns, forever, all that *(part of a tract)* or parcel of land, called ——, which is contained within the courses and distances following; that is to say, beginning &c. &c. to have and to hold the said *(part of a tract)* of land above described, and premises, with every of the appurtenances, unto the said A. B. his heirs and assigns, forever, to his and their only proper use and behoof, and to and for no other use, intent or purpose whatsoever.

In witness whereof, &c.

Form of a Deed of Trust, for the benefit of Children, &c.

This indenture, made, &c. between A. B. of —— county, ——, of the one part, and C. D. of —— county, ——, of the other part, witnesseth, that the said A. B. for and in consideration of the sum of —— current money, to him in hand paid, the receipt whereof he doth hereby acknowledge, hath given, granted, bargained and sold, and by these presents doth give, grant, bargain and sell, unto the said C. D. his heirs and assigns, *(all that tract, &c.)* to have and to hold the said tract of land above mentioned and described, unto the said C. D. his heirs and assigns, forever, in trust, to and for the uses, intents and purposes; that is to say, in trust for the use of E. F. of —— county, ——, and C. F. wife of the said E. F. for and during their joint natural lives, and the life of the survivor of them, without impeachment of or for any manner of waste, and after the death of the said E. F. and C. F. to have and to hold one undivided moiety or half part of the said *(tract of land)* and premises, in trust for the

use and behoof of M. F. (daughter of the said E. F. and C. F.) and the heirs of the body of the said M. F. and to have and to hold the other moiety or half part of the said *(tract of land)* and premises, in trust for the use and behoof of A. F. (daughter of the said E. F. and C. F.) and the heirs of the body of the said A. F. and in case of the death of the said M. F. without such issue, to have and to hold her moiety in trust for the said A. F. and the heirs of her body; and in case of the death of the said A. F. without such issue, to have and to hold her moiety in trust for the said M. F. and the heirs of her body; and in case of the death of the said M. F. and A. F. without such issue, then to have and to hold one undivided moiety or half part of the said *(tract of land)* and premises, in trust for H. F. (daughter of the said E. F. and C. F.) and the heirs of the said H. F. in fee-simple, and to have and to hold the other moiety or half part of the said *(tract of land)* and premises, in trust for S. F. (daughter of the said E. F. and C. F.) and the heirs of the said E. F. in fee-simple.

In witness whereof, &c.

Form of a Deed of Trust, for the benefit of Creditors.

This indenture, made this —— day of ——, in the year of our Lord ——, between A. B. of ——, of the one part, and C. D. and E. F. of ——, of the other part, witnesseth, Whereas the said A. B. is largely indebted to several persons on bond and otherwise, and many judgements have been rendered against him in the —— court of ——, of this state, and in the —— court of ——, for sundry of the said debts: And whereas the said C. D. and E. F. have become securities for the said A. B. in several bonds, &c. &c. Now this indenture witnesseth, that in consideration of the premises, and of the sum of *(five)* dollars current money of the United States, to him the said A. B. by the said C. D. and E. F. in hand paid, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said A. B. hath given, granted, bargained, &c. &c. to have and to hold the said lands, tenements, hereditaments, and real estate, situate as aforesaid, either in the State of Maryland or in the state of ——, and all the right, title, estate and interest, in posses-

sion, reversion or remainder, of him the said A. B. either in law or in equity, therein or thereto, unto the said C. D. and E. F. and to the survivor of them, and the heirs of such survivor, to and for the uses, trusts and purposes following, and to and for no other use, intent or purpose; that is to say, in trust that the said C. D. and E. F. and the survivor of them, and the heirs of such survivor, may sell and dispose of all or any part of the said estate, lands and premises, at public or private sale, for cash or on credit, as they or he may judge most expedient, and the proceeds of the said sales to apply, first, to discharge all judgements at this time obtained against the said A. B. principal, interest, and costs of suit, with power and authority to contest such as are not just, fair and equitable; secondly, to secure and indemnify the said C. D. and E. F. and each of them, against any bond or bonds entered into by them, or either of them, for or on behalf of the said A. B. and all costs, charges, and fees to counsel, and expences incurred & paid, in virtue of this deed of trust, or that may hereafter accrue or be expended in the execution thereof; thirdly, to pay and satisfy all just and fair debts at this time due and owing by the said A. B. and lastly, to hold the surplus, (after fulfilling and satisfying the aforesaid trusts) whether the same consists of real estate, bonds or money, in trust, to permit the said A. B. to enjoy, hold and possess, the real estate, and receive the interest of the money, if any there be, or have the same laid out and invested for the benefit of the said A. B. during his natural life, to his own use and advantage, and from and after his decease, to permit his wife C. B. in the event of her surviving him, to hold and enjoy one half part of the real estate, and to receive the interest of one half part of the money, if any there be, to her own use, during her natural life, in lieu of dower and thirds, and the other half part to be conveyed, paid and applied, to such persons as the said A. B. shall, by his last will and testament, limit and direct; and from and after the death of the said C. B. wife of the said A. B. in the event of her surviving the said A. B. then her half part to be conveyed, paid and applied, in like manner; and in the event of the said A. B. surviving his said wife, then on his death the whole to be conveyed, paid and applied, according to his last will, and if he dies intestate, and without will, then to go to his heirs and representatives, according to law.

In witness whereof, &c,

Form of a Deed of Trust, to sell Land and apply the proceeds to the use of a certain person, &c.

This indenture, made this —— day of ——, in the year of our Lord ——, between A. B. of ——, of the one part and C. D. E. F. G H. I. K. and L. M. of ——, of the other part, witnesseth, that the said A. B. for and in consideration of the trust and confidence in them the said C. D. E. F. G. H. I. K. and L. M. reposed and herein after particularly set forth, and also for and in consideration of the sum of (*five*) dollars current money of the United States, to him the said A. B. at the sealing and delivery of these presents in hand paid by them the said C. D. E. F. G. H. I. K. and L. M. the receipt whereof he the said A. B. doth hereby acknowledge, hath given, granted bargained and sold, and by these presents doth give, grant, bargain and sell, unto them the said C. D. &c. &c. in trust, for the purposes herein after particularly set forth and expressed, all the interest, right, property, claim and estate, which he the said A. B. hath, &c. to have and to hold, &c. &c. nevertheless, upon the several trusts, ends, intents, and purposes, and under and subject to the several provisoes and agreements herein after mentioned, expressed and declared, of and concerning the same, namely, upon the special trust and confidence that they, the said C. D. &c. &c. and the survivors and survivor of them, and the heirs and assigns of such survivor, and also all and every such other trustee or trustees, as shall or may be appointed by virtue of these presents, in the manner herein after provided and expressed, shall stand seized of all and singular the lands, tenements and hereditaments aforesaid, subject nevertheless to the powers and provisoes herein after expressed and declared, upon this special trust and confidence, that until the sale herein after authorised shall be made, the trustees, and their survivors, herein appointed, or which shall hereafter be appointed, agreeably to the mode herein after directed, shall and may demise and lease, the whole or any part of the said lands, until such time or times as a sale or sales thereof can be made, and receive and take the rents, issues and profits thereof; in trust nevertheless, for the use of B. A. his executors, administrators or assigns; and upon

this further trust and confidence, that the said trustees, and the survivors and survivor of them, herein appointed, or which shall be appointed hereafter, agreeably to the mode herein after directed, and the heirs and assigns of such survivor, shall and do, for the best price that can be got, sell and dispose of for cash, or on credit, on such terms, and in such parts or parcels, as to them shall seem most advantageous, all or any part of the above described and conveyed lands, tenements and hereditaments, to any person or persons who may be inclined to purchase the same, and to take and receive bonds, mortgages, or other securities, in their own name, (but to the uses hereinafter declared) for securing the payment of the purchase money of the whole, or any part of the lands aforesaid, from the purchase or purchaser thereof, and on the receipt of the purchase money contracted to be paid for the whole or any part or parcel of the lands aforesaid, to execute and acknowledge, in due form of law, deeds of conveyance unto the purchaser or purchasers, his, her, or their heirs or assigns, in fee-simple absolute; and upon the further trust that they, the said trustees, and the survivors or survivor of them herein appointed, or hereafter to be appointed, agreeably to the mode herein after directed, and the heirs, executors, administrators and assigns, of such survivor, shall and do, pay and apply, all and every the sum and sums of money, or other proceeds to be raised or paid by the rents or sale of the said lands, tenements, and hereditaments, or any part or parts thereof, to the proper use of the aforesaid B. A. or his assigns; and also upon this further trust, as to all such parts of the said lands and premises as shall remain unsold, that they, the said trustees, and their heirs, shall stand seized thereof to the use of the said B. A. his heirs and assigns, forever; provided always, and it is hereby expressly agreed and declared, by and between the parties to these presents, that it shall and may be lawful to and for the said B. A. at any time or times hereafter, by deed duly executed, to displace the trustees herein before named, or any of them, and appoint any other trustee or trustees in the place of such trustee or trustees, so by him displaced, when and as often as to him the said B. A. shall seem fit, and also, that in case of the death of any or either of the trustees herein before named, or of any trustee hereafter to be appointed by the said B. A. as aforesaid, it shall and may be lawful for the said B. A. to fill up such vacancy in the manner herein before directed; and the said

trustees, when so appointed by the said B. A. as aforesaid, shall all of them have the like power and authority to act in the several trusts according to the true intent and meaning of these presents, as fully and amply to all intents and purposes, as if such new, or other trustee or trustees, had been actually named herein by the said A. B. and provided also, that no trustee now appointed, or to be hereafter named and appointed, as above directed, shall in any event be liable for more than he shall receive, nor for any loss or damage not occasioned wilfully and designedly, by such trustee, or through his gross and wilful negligence.

In witness whereof, &c.

Form of a Deed of Surrender of demised Premises, and Release of Rents reserved, &c.

This indenture, made this —— day of ——, in the year of our Lord ——, between A. B. administratrix of T. B. late of ——, deceased, of the one part, and C. D. of ——, of the other part, witnesseth. Whereas by a certain indenture of demise, bearing date on or about the —— day of ——, and made or mentioned to be made, between the said C. D. of the one part, and the said T. B. and a certain H. K. of the other part, after reciting as therein is recited, the said C. D. for and in consideration of the sum of —— current money, to him in hand paid, as also in consideration of the rents and covenants reserved and made by the said indenture of demise, the said C. D. did demise, set, and to farm let, unto the above named T. B. and H. K. their executors, administrators and assigns, all that, &c. [*here recite the indenture of demise and the several covenants,*] as in and by the said aforegoing recited indenture of demise, recorded in liber ——, one of the land record books of —— county, as reference thereto being had it will more fully and at large appear: And whereas the said H. K. departed this life intestate, on or about the —— day of ——, in the year ——, leaving the said T. B. his survivor, who also departed this life intestate, on or about the —— day of ——, and that after the death of the said T. B. administration of his goods and chattels, rights and credits, was, in due form of law, committed to the beforementioned A. B. who hath taken upon herself the burthen and

execution of the administration thereof. Now this indenture witnesseth, that the said A. B. administratrix as aforesaid, in consideration of the sum of (*five*) dollars current money of the United States, to her in hand paid by the said C. D. hath granted, bargained, sold, surrendered, yielded up and confirmed, and by these presents doth grant, bargain, sell, surrender, yield up and confirm, unto the said C. D. his heirs and assigns, all the aforementioned described lots, parts of lots, pieces or parcels of ground and premises, and every of them, which are more particularly set forth in the aforementioned recited indenture of demise, to have and to hold the aforesaid described lots, parts of lots, pieces or parcels of ground and premises, and every of them, herein before described, with their appurtenances, with all the right, title, claim and demand, to the said A. B. administratrix as aforesaid, and of the heirs and legal representatives of the aforesaid T. B. of, in or to the same, or any part or parcel thereof, hereby assigned, surrendered, yielded up and confirmed unto him the said C. D. his heirs and assigns, for and during all the rest, residue and remainder of the term of (*ninety-nine*) years, by virtue of the herein before recited indenture of demise, now to come and unexpired, to the intent and purpose that the term granted as aforesaid therein may be merged and extinguished; and the said C. D. for and in consideration of the sum of (*five*) dollars current money of the United States, to him in hand paid, and also in consideration of the payment of all rent in arrear, reserved by the above recited indenture of demise, to the date of these presents, by the said A. B. administratrix as aforesaid, the said C. D. hath, and by these presents doth, release, exonerate, and forever quit claim to her, the said A. B. administratrix as aforesaid, and to the heirs and legal representatives of the said T. B. and to her and their, and every of their heirs, executors and administrators, the said several sums of money, being the several annual and semi-annual rents reserved by the herein before recited indenture of demise, which have heretofore arisen, or shall hereafter arise due by virtue of the said indenture of demise.

In testimony whereof the said A. B. administratrix as aforesaid, and the said C. D. have hereunto inter-

changeably set their hands and affixed their seals, the day and year first herein before written.

A. B. Seal.
C. D. Seal.

Signed, sealed and delivered, }
in the presence of }

MARYLAND, To WIT:

On this —— day of ——, in the year of our Lord ——, personally appears A. B. administratrix of T. B. before the subscriber one of the (*judges, associate justices or otherwise*) for —— (*court or county*) and acknowledges the foregoing instrument of writing to be her act and deed, and the lots, parts of lots, pieces or parcels of ground, therein described, to be the right and estate of the within named C. D. his heirs and assigns, forever, according to the purport, true intent and meaning, of the said instrument of writing.

Acknowledged before

A. S.

MARYLAND, To WIT:

On this —— day of ——, in the year of our Lord ——, personally appears C. D. before the subscriber, one of the (*judges, associate justices, or otherwise*) for —— (*court or county*) and acknowledges the foregoing instrument of writing to be his act and deed, for the purposes therein declared, according to the purport, true intent and meaning of the same.

Acknowledged before

A. S.

Form of a Letter of Attorney to acknowledge a Deed, not to be included in the Deed, but annexed thereto.

Know all men by these presents, that we A. B. and C. D. [*of the city of Paris, in the empire of France, bankers*] have signed, sealed, and executed, the (*aforegoing or annexed*) deed or indenture, whereby we have, for the considerations therein mentioned, granted, &c. unto E. F. of ——, in the state of Maryland, (one of the United

States of America,) *farmer*, all that tract, &c. as by the said deed or indenture reference being thereto had will more fully and at large appear, and for the further perfecting thereof, and making the same more complete, according to the laws of the said state of Maryland, we the said A. B. and C. D. do hereby authorise and empower G. H. and I. K. of the state aforesaid, jointly or severally, for us and in our names, and on our behalfs, to acknowledge the said deed or indenture, so executed by us as aforesaid, before such person or persons in the state of Maryland aforesaid, who are or shall be authorised to receive and take the same, and to cause or procure the said deed or indenture to be recorded according to the laws of the said state, as fully and effectually as we ourselves could do if personally present; and we the said A. B. and C. D. do hereby ratify and confirm the said acknowledgement and recording so to be had and made by the said G. H. and I. K. or either of them, as aforesaid.

In witness whereof we have hereto set our hands and seals, this —— day of ——, in the year of our Lord ——.

A. B. Seal.
C. D. Seal.

Signed, sealed and delivered, in the presence of us,
W. W.
T. T.

Form of an Affidavit by one of the subscribing Witnesses to the foregoing Letter of Attorney.

MARYLAND, TO WIT.

On this —— day of ——, in the year of our Lord ——, personally appears W. W. ——, (*supercargo of the ship* ——) before me the subscriber (*judge or justice,*) of the state of Maryland for the —— (*court or county*) and on his solemn oath taken on the holy Evangely of Almighty God deposeth and saith, that he was present at [*the city of Paris, in the empire of France,*] and did see A. B. and C. D. of the said city, (*bankers,*) sign and seal, and as their act and deed duly execute and deliver, the within and aforegoing letter of Attorney, to and in favor of G. H. and

I. K. of —— aforesaid, for the uses, intents and purposes therein expressed and set forth ; and that at the time of the execution thereof this deponent and one T. T. did set and subscribe their names as witnesses thereto, in manner as thereby appears.

Sworn before A. S.

Form of a Covenant from a Bargainor that he is seized of the Premises, which are free from incumbrances.

And the said A. B. for himself, his heirs, executors and administrators, doth hereby covenant, promise, grant, and agree, to and with the said C. D. his heirs, executors, administrators and assigns, that before the sealing and delivery hereof, he the said A. B. is the true, sole, and lawful owner of the before mentioned [*tract or parcel of land*] and premises, and is lawfully seized and possessed of the same in his own proper right, as a good, perfect and absolute estate of inheritance in fee-simple, and hath good right, full power and lawful authority to grant, bargain, sell convey and confirm, the said [*tract or parcel of land*] and premises unto the said C. D. his heirs and assigns, in manner as aforesaid ; and that the said C. D. his heirs and assigns shall and may from time to time, and at all times forever hereafter, by force and virtue of these presents, lawfully, peaceably and quietly have, hold, use, occupy, possess and enjoy, the said [*tract or parcel of land*] and premises, with the appurtenances, free and clear, and freely and clearly acquitted, exonerated and discharged of, from all and all manner of former or other gifts, grants, bargains, sales, leases, mortgages, or incumbrances, of what name or nature soever ; that might in any measure or degree obstruct or make void these presents.

Form of a Covenant from a Bargainor that he will warrant and defend, &c.

And the said A. B. for himself, his heirs, executors and administrators, doth hereby further covenant, promise, grant and agree to and with the said C. D. his heirs executors, administrators and assigns, that he the said A.

B. and his heirs the said [*tract or parcel of land*] and premises, hereby granted, bargained and sold, and every part and parcel thereof, with the appurtenances thereunto belonging, to him the said C. D. his heirs and assigns, against him the said A. B. and his heirs, and against all and every person or persons whatsoever, claiming any right, title, or interest, of, in or to, the same, or any part thereof, shall and will hereafter warrant and forever defend by these presents.

Form of a Deed of Trust, by an Insolvent Debtor.

This indenture, made this —— day of ——, in the year of our Lord ——, between A. B. of —— county, of the one part, and C. D. of —— county, of the other part. Whereas on application of the said A. B. to the honorable ——, of the state of of Maryland, for the benefit of the act of Assembly for the relief of sundry insolvent debtors, passed at (*November*) session, ——, the said —— did, on the —— day of ——, appoint the above named C. D. trustee on behalf of the creditors of the said A. B. and did direct that the said A. B. should execute a deed to the said trustee for all his property, debts, rights and claims, (excepting the necessary wearing apparel of himself and family) in trust, for the said creditors of the said A. B. Now this indenture witnesseth, that the said A. B. in pursuance of the order of the ——, and to obtain the benefit of the said act of Assembly, and in consideration of the sum of *(five shillings)* current money to him paid by the said C. D. hath granted, bargained and sold, assigned, transferred and set over, and by these presents doth freely and absolutely grant, bargain and sell, assign, transfer and set over, unto the said C. D. and his assigns, all and every the household goods and furniture, effects and chattels, debts and sum and sums of money, belonging to, and due and owing to, the said A. B. as are in the schedule of the said A. B. heretofore filed in the —— court of —— particularly mentioned, and also all other property, real, personal and mixed, of what kind, nature, or quality soever, (excepting the necessary wearing apparel of the said A. B. and family) that the said A. B. has, or claims any title to, or interest in, at the date of this deed, and all debts, rights and claims, which he has at the

date hereof, or that he is in any respect entitled to, in possession, remainder or reversion ; to have and to hold the same, and every part and parcel thereof, unto him the said C. D. and his assigns, in trust, to and for the creditors of the said A. B. and for their benefit, agreeably to the said act of Assembly, entitled, ("*An Act for the relief of sundry insolvent debtors,*") passed at (*November*) session, in the year ——.

In witness whereof the said A. B. hath hereunto subscribed his name, and affixed his seal, the day and year first herein before written.

A. B. Seal.

Signed, sealed and delivered in presence of }
E. F.
G. H.

[*The foregoing must be acknowledged and recorded as other deeds are.*]

CORONER.

The office and power of a *Coroner* are principally judicial; and consist, in inquiring, when any person is slain, or dies suddenly, or in prison, concerning the manner of his death ; and this must be *upon view of the body*, for if the body be not found, the coroner cannot sit. He must also sit at the very place where the death happened. Whenever it happens that any person comes to an unnatural death the neighborhood must give notice of it to a coroner ; and it is held an indictable matter to bury a man that dies a violent death, before the coroner's inquest hath sat upon him ; nor ought the body to be suffered to lie till it putrifies, before he is sent for. When notice is given to the coroner, he is to issue a precept to the constable of the hundred to summon a jury of good and lawful men, to appear before him in such a place, to make an inquisition touching that matter.

Form of a Coroner's Precept to Summon a Jury.

MARYLAND, —— COUNTY, TO WIT :

You are hereby commanded and required, immediately

to summon and warn fourteen good and lawful men of —— hundred, in the said county, to be and appear before me the subscriber one of the coroners of the state of Maryland for the county aforesaid, at ——, in the said county, on the —— day of ——, then and there to enquire of and concerning the death of A. B. And be you then there to certify what you shall have done in the premises, and further to do and execute what shall be then and there enjoined you. Given under my hand and seal, the —— day of ——, ——.

J. S. Seal.

To the Constable of —— hundred.

If the constables make not a return, or the jurors returned appear not, their defaults are to be returned to the coroner; and the constables or jurors in default will be fined. All persons of the neighborhood, above the age of twenty-one years, are bound to attend at the taking the inquisitions when summoned, unless they have a reasonable excuse to the contrary.

The jury appearing is to be sworn and charged by the coroner to enquire, how the party (being in view) came by his death. The coroner may address them thus:

"You good and lawful men of —— county, returned to appear here at this time, to enquire of and concerning the death of A. B. answer to your names as you shall be called".

Then swear them [twelve at least,] and give the foreman his oath, as follows:

Form of an Oath to be administered to the Foreman of a Coroner's Jury.

You shall diligently enquire, and true presentment make how and in what manner A. B. (*or* a person unknown, *as the case may be*) here lying dead, came to his death, and of such other matters relating to the same as shall be lawfully required of you according to your evidence: So help you God.

After the foreman has been sworn, the rest may be sworn (three or four together) as follows:

"Such oath as C. D. the foreman of this inquest hath for his part taken, you and every of you shall well and truly observe and keep on your parts respectively: So help you God."

When the jury have been sworn, command them to stand together and hear their charge; which the coroner may deliver in manner following:

Form of the Charge to a Coroner's Jury, by the person acting as Coroner.

Gentlemen,

You have been sworn and must declare upon your oaths whether this man died by felony, mischance, or want of food or raiment; and whether, if by felony, it was his own or that of another's; and if by mischance, whether by the act of God or man: And who he was, and from whence he came: And of all circumstances of and concerning his death, you are to make particular enquiry, and give your verdict of inquisition according to the truth of the matter, as it shall come to your knowledge.

If the evidence be not ready, you may adjourn to another day and place, to receive evidence, binding the jury (by recognizance in £20 each if necessary) for their appearance.

Then send out your warrant for the witnesses, commanding them to come to be examined before you, &c. And when they appear, take their examinations in writing under their hands. If it be about the trial of a man's life, then must the witnesses be all bound over, personally to appear at the next court, to deliver their knowledge therein.

Form of a Summons for a Witness or Witnesses, to testify to a Coroner's Jury.

You are hereby commanded forthwith to summon A. B. C. D. and E. F. and cause them to appear before me on the —— day of ——, to undergo an examination, and to declare upon oath what they know of and concerning the death of A. B. And make return hereon on the —— day of —— aforesaid. Given under my hand and seal this —— day of ——, ——.

J. S. Seal.

To the Constable for —— hundred.

After the examination has been gone through, return the verdict of inquest; which may be couched in the following form:

General form of a Verdict of Inquisition.

MARYLAND, —— COUNTY, TO WIT:

An inquisition taken at ——, in the county and state aforesaid, on the —— day of ——, in the year of our Lord ——, before me C. D. one of the coroners of the said state for the county aforesaid, upon the view of the body of A. B. then and there lying dead, upon the oaths of *[here insert the names of the jurors]* good and lawful men of —— aforesaid, who being sworn upon the holy Evangely of Almighty God, and charged to enquire when, where, how, and after what manner, the said A. B. came to his death, do say, upon their oaths, that, &c. &c. *[Here describe the manner, cause, &c. &c.]*

In witness whereof, as well the aforesaid coroner, as the jurors aforesaid, have to this inquisition put their hands and seals, on the day and year aforesaid, and at the place aforesaid.

C. D. Coroner.
E. F.
G. H.
J. K. &c. jurors.

Coroners are obliged, in case the office of Sheriff becomes vacant, to exercise the duties of a Sheriff for the county, until a new one is commissioned. They are likewise the only officers that can serve process for or against the Sheriff: But before they execute any civil process, they are obliged to give bond, or enter into recognizance to the State.

Form of a Coroner's Bond.

Know all men by these presents, That we A. B. C. D. and E. F. are held and firmly bound unto the State of Maryland in the just and full sum of £1000 current money, to be paid to the said State or to its certain attorney; for which payment well and truly to be made, we bind

ourselves and each of us, our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated this —— day of ——, in the year of our Lord ——.

The condition of the above obligation is such, that if the above bounden A. B. shall well and truly execute the office of coroner in all things thereto belonging; and shall also well and faithfully execute and return all writs or other process, to him directed; and shall also pay and deliver, to the person or persons entitled to receive the same, all sums of money and tobacco, all goods and chattels, by him levied, seized, or taken, agreeably to the directions of the writ, or other process, under which the same shall have been levied, seized or taken; and also shall keep and detain in safe custody all and every person or persons committed to his custody, or by him taken in execution, or who shall be committed for want of bail, without suffering them, or any of them, to escape or depart from his custody; and shall also satisfy and pay all judgements which shall be rendered against him as coroner; and shall also well and truly execute and perform the several duties required of or imposed upon him by the laws of the State of Maryland; then this obligation to be void and of none effect, else to be and remain in full force and virtue in law.

A. B. Seal.
C. D. Seal.
E. F. Seal.

Signed, sealed and delivered in the presence of }
(the chief justice of the district, or any associate justice of the county.)

The two securities must be freeholders of the county; and the justice by whom it is attested must deliver it to the clerk of the county court, by whom it must be recorded. 1797, *c.* 95, *s.* 1.

When a judgement is entered against a coroner for default in not producing the body of a person, if he satisfies the plaintiff the amount of debt and costs, he has his remedy against the defendant. *ibid. s.* 2.

All coroners, before they proceed to act as such, must take an oath or affirmation. 1797, *c.* 87, *s.* 2.

Form of a Coroner's Oath.

I A. B. do swear or affirm *(as the case may be)* that in

summoning jurors to be returned to any of the courts of this state, and that in executing every writ or precept which shall come to my hands for the return of jurors, I will use my utmost diligence to summon and return as jurors, sober and judicious persons, of good reputation, and qualified by the laws of this state to serve as jurors, and to prevent any man being summoned or returned by me, or by any officer under me, who in my judgement will be influenced in determining any of the matters which shall come before him as a juror, by hatred, malice or ill will, fear, favor or affection, or by any partiality whatever, and that I will not summon or return as a juror any person, who, in my opinion, or to my knowledge, may be solicitous to be returned upon the pannel of jurors.

The foregoing oath is in addition to what is prescribed by the constitution of the state, &c.

Coroners must not summon persons as jurors who have not arrived at the age of 25 years, and who do not possess the other qualifications required by the constitution and laws. 1797, *c.* 87, *s.* 5.

Persons being drunk or cursing in the presence of any coroner, are subject to fine, &c. 1723, *c.* 16, *s.* 2, 3, 4, 5.

Coroners are exempt from attendance as jurors. 1715, *c.* 37, *s.* 4.

Coroners being called upon by order of court to produce the body of a defendant before arrested, and failing to do so, he shall be amerced, and judgement may be entered up against him for the sum and costs recovered against the defendant. 1768, *c.* 10, *s.* 1.

Coroners failing to make return of original writs shall be amerced. 1794, *c.* 54, *s.* 2.

They are liable to have judgement entered up against them on failing to make return of any writ of execution, within the time limitted by rule of court. *ibid.* *s.* 1.

The chancellor may fine coroners for not producing the bodies of persons in the court of chancery agreeably to order or process issued to him. 1785, *c.* 72, *s.* 24.

Coroners may give bond at any time of the year within sixty days after their appointment. 1799, *c.* 91, *s.* 1.

Summonses and executions may be issued to coroners from one county to another. 1777, *c.* 12, *s.* 1; 1794, *c.* 54, *s.* 2.

DESCENTS.

If any person seized of an estate in any lands, tenements or hereditaments, lying or being in this state, in fee-simple, or fee-simple conditional, heretofore or hereafter acquired, or of an estate in fee-tail, to the heirs of the body generally, shall die intestate thereof, such lands, &c. shall descend to the kindred, male and female, in the following order:

First, to the child or children and their descendants, if any, equally, and if no child or descendant, and the estate descended to the intestate on the part of the father, then to the father, and if no father living, then to the brothers and sisters of the intestate of the blood of the father and their descendants equally, and if no brother or sister as aforesaid, or descendant from such brother or sister, then to the grand-father on the part of the father, and if no such grand-father living, then to the descendants of such grand-father and their descendants in equal degree equally, and if no descendant of such grand-father then to the father of such grand-father, and if none such living, then to the descendants of the father of such grand-father in equal degree, and so on, passing to the next lineal male paternal ancestor, and if none such, to his descendants in equal degree, without end.

And if no paternal ancestor, or descendant from such ancestor, then to the mother, of the intestate, and if no mother living, to her descendants in equal degree equally, and if no mother living, or descendant from such mother, then to the maternal ancestors and their descendants, in the same manner as is above directed as to the paternal ancestors and their descendants.

And if the estate descended to the intestate on the part of the mother, and the intestate shall die without any child or descendant as aforesaid, then the estate shall go to the mother, and if no mother living, then to the brothers and sisters of the intestate of the blood of the mother and their descendants in equal degree equally, and if no such brother or sister, or descendant of such brother or sister, then to the grand-father on the part of the mother, and if no such grand-father living, then to his descendants in equal degree equally; and if no such descendant of such grand-father, then to the father of such grand-father, and if none such living, then to his descendants in equal degree, and so on, passing to the next male maternal ancestor,

and if none such living, to his descendants in equal degree.

And if no such maternal ancestor, or descendant from any maternal ancestor, then to the father of the intestate, and if no father living, to his descendants in equal degree equally, and if no father living, or descendant from the father, then to the paternal ancestors and their descendants in the same manner as is above directed as to the maternal ancestors.

And if the estate is or shall be vested in the intestate by purchase, and not derived from or through either of his ancestors, and there be no child or descendant of such intestate, then the estate shall descend to the brothers and sisters of such intestate of the whole blood, and their descendants, in equal degree equally, and if no brother or sister of the whole blood, or descendant from such brother or sister, then to the brothers and sisters of the half blood and their descendants, in equal degree equally, and if no brother or sister of the whole or half blood or any descendant from such brother or sister, then to the father, and if no father living, then to the mother, and if no mother living, then to the grand-father on the part of the father, and if no such grand-father living, then to the descendants of such grand-father in equal degree equally, and if no such grand-father, or any descendant from him, then to the grand-father, on the part of the mother, and if no such grand-father, then to his descendants in equal degree equally, and so on without end, alternating the next male paternal ancestor and his descendants, and the next male maternal ancestor and his descendants, and giving preference to the paternal ancestor and his descendants, and if there be no descendants or kindred of the intestate as aforesaid to take the estate, then the same shall go to the husband or wife, as the case may be, and if the husband or wife be dead, then to his or her kindred in the like course as if such husband or wife had survived the intestate, and then had died entitled to the estate by purchase, and if the intestate has had more husbands or wives than one, and all shall die before such intestate, then the estate shall be equally divided among the kindred of the several husbands or wives in equal degree equally. 1786, *c.* 45, *s.* 2.

No right shall vest in any persons other than children and their descendants, unless such person is in being and capable in law to take as heir at the time of the intestate's

death, but any child born after such death shall have the same right of inheritance as if born before. *ibid. s.* 3.

The child or children of a father or mother, if dead, shall, by representation, be considered in the same degree as the father or mother would have been if living, and shall have the same share of the estate. *ibid. s.* 4. If more children than one, such share to be equally divided among them. *ibid.*

Children, or their issue, having received any real estate by way of advancement, may elect to come into partition with the other parceners, on bringing such advancement into hotchpot with the estate descended. *ibid. s.* 5. But they shall not be entitled to claim a share by descent, without bringing such advancement into the common stock or hotchpot, if there be another child or children unprovided for. *ibid.*

[*For Descent of personal Property, see the head of Administration; and for other matter see Intestate Real Estates.*]

DISTRESS.

A *distress* is the taking a personal chattel out of the possession of the wrong-doer into the custody of the party injured, to procure a satisfaction for the wrong committed. The most usual injury for which a distress may be taken, is that of non-payment of rent. All chattels personal are liable to be distrained, unless particularly protected or exempted. The following things are held not to be distrainable: Whatever is in the personal use or occupation of any man, is for the time privileged or protected from any distress, as an ax with which a man is cutting wood, or a horse while a man is riding him; but horses, drawing a cart, may, cart and all, be distressed for rent: Valuable things in the way of trade are not liable to distress; as, a horse standing in a Smith's shop to be shoed, or in a common inn; or cloth at a taylor's house; or corn sent to a mill, or a market; for these are supposed in common presumption not to belong to the owner of the house, but to his customers. But, generally speaking, whatever goods and chattels the landlord finds upon the premises, whether they in fact belong to the tenant or a stranger, are distrainable by him for rent; and the stranger has *his* re-

medy by action on the case against the tenant, if by the tenant's default the chattels are distrained, so that he cannot render them when called upon. There are also other things privileged from distress; such as a man's tools and utensils of his trade, the axe of a carpenter, the books of a scholar and the like. Nothing shall be distrained for rent, which may not be rendered again in as good plight as when is was distrained, for which reason milk, fruit, and the like, cannot be distrained. Things fixed to the freehold may not be distrained, as windows, doors and chimney-pieces. All distresses for rent must be made by day; and when a person intends to make a distress, he must, by himself, or his bailiff, enter on the premises. The landlord may distrain any goods of his tenant, carried off the premises clandestinely, wherever he finds them within thirty days after, unless they have been *bona fide* sold for a valuable consideration. The landlord may also distrain the beasts of his tenant, feeding upon any commons or wastes appendant or appurtenant to the premises. Where a man is entitled to distrain for an entire duty, he ought to distrain for the whole at once; and not for a part at one time and a part at another. But if he distrains for the whole, and there is not sufficient on the premises, or he happens to mistake in the value of the thing distrained, and so takes an insufficient distress, he may take a second distress to complete his remedy. Distresses must be proportioned to the thing distrained. When the distress is made, the landlord must impound the things within a convenient distance from the premises, (three miles); and should be kept in pound *covert* (which the landlord must do if the distress be of household utensils or the like) else he will be answerable for them.

Distresses may be replevied; the plaintiff giving bond with two sureties, in double the value of the goods distrained.

Distress for rent, can only be for rent in arrear; therefore it may not be made on the same day on which the rent becomes due; for if the rent is paid in any part of that day, whilst a man can see to count money, the payment is good.

Gates or inclosures must not be broken open, nor thrown down, to make distress.

If a landlord comes into a house, and seizes upon some goods as a distress in the name of all the goods in the house; that will be a good seizure of all.

Where any goods or chattels fraudulently or clandestinely conveyed or carried away, shall be put, placed, or kept in any house, barn, stables, outhouse, yard, close, or place locked up, fastened, or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent; it shall be lawful for the landlord, or his steward, bailiff, receiver, or other person or persons impowered, to take and seize, as a distress for rent, such goods and chattels (first calling to his assistance the constable of the district, or place, where the same shall be suspected to be concealed, and in case of a dwelling house, oath being also first made before a justice of the peace, of a reasonable ground to suspect that such goods or chattels are therein) in the day time to break open and enter into such house, barn, stable, outhouse, yard, close, and place; and to take and seize such goods and chattels for the said arrears of rent, as he might have done if they had been in any open place.

Form of an Inventory of Goods distrained.

An Inventory of the several Goods and Chattels, distrained by us, whose names are underwritten, the —— day of ——, in the year of ——, in the *(house, or otherwise)* of A. B. in ——, by the authority and on the behalf of C. D. of ——, for —— pounds arrear of rent due to him the said C. D. to wit:

One table,
Six chairs, &c. &c.

In all cases of distress for rent, if the tenant or owner do not, within five days after the distress is taken, and notice of the cause thereof given him, replevy the same with sufficient security; the distrainor, with the Sheriff or constable, shall cause the same to be appraised by two sworn appraisers, and sell the same towards satisfaction of the rent and charges, rendering the overplus, if any, to the owner himself.

Fines for refusing to serve as constable, are leviable by distress. 1715, *c.* 15, *s.* 2; 1752, *c.* 7, *s.* 2.

Sheriffs are empowered to distrain for officers' fees. 1779, *c.* 25, *s.* 17.

Form of a Complaint and Oath to be made before a Justice in case of a Dwelling-House, where goods and chattels are fraudulently and clandestinely removed and conveyed away, and secured, so as to prevent them from being taken and seized as a Distress for arrears of rent.

STATE OF MARYLAND, —— COUNTY, TO WIT:

On this —— day of ——, in the year of our Lord ——, C. D. of —— complains and makes oath, that certain goods and chattels of A. B. of ——, have been fraudulently and clandestinely conveyed and carried away from ——, by the said A. B. his servant or servants, agent or agents, or other person or persons, aiding or assisting therein, to prevent —— from distraining the said goods and chattels for arrears of rent due to the said C. D. for the said ——; and that the said goods and chattels are put, placed or kept, in the house, barn, stable, out-house, yard, close, or other place of ——, at —— locked up, fastened or otherwise secured, so as to prevent the said goods and chattels from being taken and seized as a distress for arrears of rent; and that the said C. D. hath a reasonable ground to suspect, and doth suspect, that the said goods and chattels are in the dwelling-house of the said —— at ——.

Sworn before J. S.

Form of a Warrant upon the preceding Complaint and Oath.

STATE OF MARYLAND, —— COUNTY, TO WIT:

Whereas C. D. of ——, hath this —— day of ——, exhibited his complaint and made oath before me the subscriber, one of the justices of the peace for the county and state aforesaid, that certain goods and chattels of A. B. of ——, have been fraudulently and clandestinely conveyed and carried away from ——, by the said A. B. his

servant or servants, agent or agents, or other person or persons, aiding or assisting therein, to prevent —— from distraining the said goods and chattels for arrears of rent due to the said —— for the ——; and that the said goods or chattels are put, placed, or kept in the house, barn, stable, out-house, yard, close, or other place of ——, at ——, locked up, fastened, or otherwise secured, so as to prevent the said goods and chattels from being taken and seized as a distress for arrears of rent; and that the said A. B. hath a reasonable ground to suspect, that the said goods and chattels are in the dwelling-house of ——, at ——; these are therefore to command you, to aid and assist ——, his bailiff, or other person or persons empowered to take or seize, as a distress for rent, the said goods and chattels, in the day time, to break open, and enter into the said dwelling-house, barn, stable, out-house, yard, close, or other place, of the said ——, at ——, and to take and seize the said goods and chattels for the said arrears of rent, according to law. Given under my hand and seal at ——, the —— day of ——, ——.

J. S. Seal.

Any tenant fraudulently removing or conveying away his goods or chattels, and any person wilfully and knowingly aiding or assisting him therein, shall forfeit to the landlord double the value of such goods.

Form of Notice of Sale of Goods and Chattels.

Notice.

A. B. take notice, that by the authority, and on the behalf of your landlord C. D. I have, this —— day of ——, in the year of our Lord ——, distrained the several goods and chattels specified in the schedule hereunto annexed, in your *(house, or otherwise)* at ——, for —— pounds, arrear of rent due to him the said C. D. And if you shall not pay the said rent so due and in arrear as aforesaid, or replevy the said goods and chattels, I shall after the expiration of five days from the date hereof, cause the said goods and chattels to be appraised and sold, according to

law. Given under my hand the day and year above written.

G. C.

Witness, that a copy hereof was this day delivered to the said A. B. (or, left at his place of residence.)
J. B.

It is customary to have two appraisers, to whom an oath must be administered.

Form of the Appraisers' Oath.

You and each of you do make oath on the holy Evangely of Almighty God, that you will well and truly appraise the goods and chattels mentioned in this inventory, according to the best of your understanding: So help you God.

The appraisement may be in the form of the inventory, specifying the particulars, and their respective valuations: And then add at the end—

Appraised by us, this —— day of ——, in the year of our Lord ——.

E. F.
G. H. } *Sworn Appraisers.*

For any unlawful act done in taking a distress, the whole shall not be unlawful, or the parties trespassers *ab initio*; but the party grieved shall only have an action for the real damage sustained; and not even that, if tender of amends is made before any action is brought.

DOWER.

The act to direct descents does not bar or affect any widow's right of dower. 1786, *c.* 45, *s.* 6.

Commissioners, on making a division or sale of a real estate, shall lay off the widow's dower, and make return thereof to the court issuing the commission, who may return or confirm such return, and on the consent of the widow to sell the whole estate, her proportion arising from

such sale may be awarded by the said courts. 1799, c. 49, *s.* 5, 6.

[*For other matters relating to widow's dower, see the head of Administration.*]

ELISOR.

Executions from the general or county courts may be directed to an *Elisor*, to be appointed by one judge or justice thereof, on his being satisfied, by affidavit, that the sheriff cannot be safely trusted with the execution thereof. 1794, *c.* 54, *s.* 5. The appointment must be filed with the clerk of the court.

Such Elisor is allowed the same power as the sheriff, the same fees, and to be subject to the same remedies. *ibid. s.* 6. On his refusal, dying, &c. another may be appointed in the same manner, to whom the execution shall be directed.

ESCAPE.

An *escape* of a person arrested upon a criminal process, by eluding the vigilance of his keepers before he is put in hold, is an offence against public justice, and the party himself is punishable by fine or imprisonment. But the officer permitting such escape, either by negligence or connivance, is much more culpable than the prisoner. Officers therefore who, after arrest, *negligently* permit a felon to escape, are also punishable by fine; but *voluntary* escapes by consent and connivance of the officer, are a much more serious offence; for it is generally agreed that such escapes amount to the same kind of offence, and are punishable in the same degree, as the offence of which the prisoner is guilty, and for which he is in custody, whether treason, felony, or trespass. And this whether he were actually committed to jail, or only under a bare arrest. *Blackstone's Commentaries.*

But the officer cannot be thus punished till the original delinquent hath actually received judgement, upon verdict or confession, of the crime for which he was so committed

or arrested; otherwise it might happen, that the officer might be punished for treason or felony, and the person arrested and escaping might turn out to be an innocent man. But, before the conviction of the principal party, the officer thus neglecting his duty may be fined and imprisoned for a misdemeanor. *ibid.*

In an action of escape, the sheriff shall not be chargeable for more than the sum of money or tobacco really due, or endorsed to be received on the execution in discharge thereof. 1779, *c.* 25, *s.* 5.

ESCHEAT.

The law of *escheats* is founded upon this single principle, that the blood of the person last seized in fee-simple is, by some means or other, utterly extinct and gone; and since none can inherit his estate but such as are of his blood and consanguinity, it follows as a regular consequence that when such blood is extinct, the inheritance itself must fail. *Blackstone's Commentaries.*

No warrant of escheat shall be good, unless where the owner hath died or shall die intestate, seized in fee-simple, and without having any relation of the half blood within two degrees (that is, first cousins,) as the same are reckoned by the common law, and without leaving any relation who might inherit if a subject of this or any of the United States. 1781, *c.* 20, *s.* 8.

The value in current money of all escheat lands, and improvements thereon, shall be returned and certified by the surveyor, and the state treasurers shall finally ascertain the value of such land and improvements, and shall receive the money therefor. *ibid. s.* 9; 1795, *c.* 61, *s.* 4.

A sale of lands liable to escheat may be ordered by the chancellor for the payment of debts where there is not property sufficient. 1785, *c.* 78, *s.* 1.

On the return of a certificate on an escheat warrant, any creditor of the deceased may enter a caveat, and thereupon no patent shall issue till an examination by the chancellor, and payment made to the creditors. *ibid.*

If the creditor shall be out of the state, so that he has not notice of the death of the intestate in time to enter a caveat, and the real estate shall be escheated, the state will, on application of such creditor, pay the amount received, *ibid, s.* 2.

If a patent shall issue for lands escheated to the state, and the person died indebted within the state, or to any of its citizens, the creditors may file their bill against the state and recover as far as the money has been received. 1794, *c.* 60, *s.* 6.

In all cases where land has been escheated, or shall escheat to the state, any person having a claim to the land, or a lien or a charge on it, or a title in equity, may bring a suit against the state in any court of law or equity, as it might have been brought against the person. 1799, *c.* 79, *s.* 7.

EVIDENCE.

No man ought to be compelled to give evidence against himself in a court of common law, or in any other court, but in such cases as have been usually practised in this state, or may hereafter be directed by the legislature. *Declaration of Rights, art.* 20.

No person convict or attaint of subornation of perjury, shall be received as a witness till such judgement be reversed. 1692, *c.* 16, *s.* 3, 4.

No slave, manumitted agreeably to the laws of this state, since the passage of the act of April, 1783, *c.* 23, or who shall hereafter be manumitted or made free in virtue of the act of 1796, *c.* 67, shall be entitled to give evidence against any white person, or shall be received as competent evidence to manumit any slave petitioning for freedom. 1796, *c.* 67 *s.* 5.

[*For Evidence of Debts, &c. see the head of Accounts; and Testimony Perpetuated.*]

FEME-COVERT.

By marriage the husband and wife are one person in law; that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband, under whose wing, protection, and *cover*, she performs every thing; and is therefore called in law a *feme-covert*, and her condition during her marriage is called her *coverture*. *B. C.*

A man cannot grant any thing to his wife, or enter into covenant with her; and it is also generally true, that all compacts made between husband and wife, when single, are void by the intermarriage: A woman indeed may be attorney for her husband, for that implies no separation from, but is rather a representation of, her lord. And a husband may also bequeath any thing to his wife by will, for that cannot take effect till the coverture is determined by his death. The husband is bound to provide his wife with necessaries by law as much as himself, and if she contracts debts for them, he is obliged to pay them; but, for any thing besides necessaries, he is not chargeable: And if a wife elopes, and lives with another man, the husband is not chargeable even for necessaries; at least if the person who furnishes them is sufficiently apprised of her elopement. If the wife be indebted before marriage, the husband is bound afterwards to pay the debt, for he has adopted her and her circumstances together. If the wife be injured in her person or her property, she can bring no action for redress without her husband's concurrence, and in his name as well as her own; neither can she be sued without making the husband a defendant. *ibid.*

In criminal prosecutions, it is true, the wife may be indicted and punished separately; for the union is only a civil union. But in trials of any sort, they are not allowed to be evidence for, or against each other. Yet where the offence is directly against the person of the wife, this rule has been usually dispensed with, and in case a woman be forcibly taken away, and married, she may be a witness against such her husband, in order to convict him. *ibid.*

A wife may have security of the peace against her husband, and, in return, a husband against his wife. *ibid.*

[*For other matters relating to feme-coverts, see Administration.*]

FORCIBLE ENTRY AND DETAINER.

Forcible Entry and Detainer, is committed by violently taking possession of lands and tenements, with menaces,

force and arms, and without the authority of law. Upon any forcible entry, or forcible detainer after peaceable entry, into any lands, &c. one or more justices of the peace, taking sufficient power of the county, may go to the place and there record the force upon his own view, as in case of riots; and upon such conviction may commit the offender to jail, till he makes fine and ransom. And moreover, the justices have power to summon a jury, to try the forcible entry or detainer complained of; and, if the same be found by that jury, then, besides the fine on the offender, the justices shall make restitution by the sheriff of the possession, without inquiring into the merits of the title; for the force is the only thing to be tried, punished, and remedied by them. But this provision does not extend to such as endeavor to maintain possession by force, where they themselves, or their ancestors, have been in the peaceable enjoyment of the lands and tenements for three years immediately preceding.

Form of a Warrant to Summon a Grand Inquest.

——, County, To Wit:

I A. B. one of the justices of the peace of the State of Maryland, in and for the said county, to the sheriff of the aforesaid county, greeting. Whereas complaint hath been duly made to me that E. F. of ——, in said county, on the —— day of ——, with force and arms, and with a strong hand, (as 'tis said) did unlawfully enter into —— whereof C. D. of said county, was seized in his demesne as of fee, against the form of the statute in such case made and provided. You are therefore hereby commanded that you cause to come before me at ——, in said county, on the —— day of ——, at —— o'clock in the forenoon of that day, twenty-four sufficient and indifferent men of that neighborhood, to enquire upon their oaths or affirmations, of and concerning the said forcible entry so made as aforesaid, and that you also summon the said E. F. so that he be and appear before me at the day and place as aforesaid, to shew cause (if any he has) why restitution of the premises aforesaid should not be forthwith made to the said C. D. and have you then and there the names of the jurors and this writ. Given, &c.

Form of the Sheriff's Return.

To the justice within named I do hereby certify, that I have summoned twenty-four good and lawful men of the within named county, and have also summoned the within named E. F to be and appear at the day and place within mentioned, as I am within commanded. So answers

G. C. Sheriff.

Form of the Oath of the Foreman.

You do swear *(or solemnly, sincerely and truly, declare and affirm)* that, as foreman of this inquest, you will diligently enquire, and true presentment make, of all such matters and things as shall come before you, concerning a forcible entry and detainer, said to have been lately committed in the *(dwelling-house)* of C. D. &c. at the township of ——, in this county; you shall spare no one for favor or affection, or grieve any one for hatred or ill-will; but proceed herein according to the best of your knowledge, and according to the evidence: So help you God.

Form of the Oath of the Jury.

You, and each of you, do swear *(or solemnly, sincerely and truly declare or affirm)* that the same that your foreman hath sworn to observe and keep on his part, you, and each of you, will severally observe and keep on your parts. So help you God.

Form of the Inquisition.

Maryland, —— County, To Wit:

An inquisition taken for the state of Maryland at —— in said county, on the —— day of ——, before A. B. Esquire, one of the justices of the peace in and for said county, by the oath of J. K. &c. and the solemn affirmation of L. M. *(any number more than 11, and less than 24)* who upon their oaths and affirmations aforesaid do say, that C. D. of —— on the —— day of ——, was seized in his demesne, as of fee of and in ——, with the appurtenances, in the county aforesaid; and that whilst the said C. D. was seized thereof, on the same —— day of ——, one E. F.

of ——, with force and arms, to wit, with *(guns, pistols, swords, clubs and other offensive weapons,)* and with a strong hand did make a forcible entry into the said tenement and premises, then being in the seisin and possession of the said C. D. and did then and there with force and arms, and with a strong hand unlawfully disseize the said C. D. thereof, and then and there with force and arms and a strong hand, did unlawfully expel and eject, and him the said C. D. so disseized and expelled from said ——, with the appurtenances from the said —— day of —— until the day of the taking of this inquisition, with like strong hand and armed power did keep out, and yet doth keep out, in contempt of the said state, to the great disturbance of the peace thereof and against the form of the statute in such case made and provided. We whose names are hereunto set, being the jurors above mentioned, do upon the evidence now produced before us, find the inquisition aforesaid to be true.

Form of a Warrant of Restitution.

MARYLAND, —— COUNTY, TO WIT:

The State of Maryland to the sheriff of said county, Greeting. Whereas by an inquisition taken before me, one of the justices, &c. on &c. at ——, by the oath of J. K. &c. and the solemn affirmation of L. M. &c. *(names of jurors)* it was found that, &c. *(here recite the inquisition)* as by said inquisition, reference being thereto had more fully appears. Therefore on behalf of the said state, I charge and command you, that, taking with you the power of the county (if it be needful) you go forth to the said messuage, close and premises, and the same with the appurtenances, you cause to be re-seized; and that you cause the said C. D. to be restored and put into his full possession thereof, according as he, before the entry aforesaid, was seized, according to the form of the statute in such case made and provided. And this you shall in no wise omit, on the penalty thereon incumbent. Given under my hand and seal, &c.

In case of forcible entry and detainer, the party aggrieved may complain to any one justice; but although one justice alone may proceed in such cases, yet it is adviseable for him, if the time for viewing the force will suffer it, to take to his assistance one or two more justices. All people of the county, as well the sheriffs, as others, shall

be attendant on the justices, to arrest the offenders; on pain of imprisonment and fine.

If the doors be shut, and they within the house shall deny the justice to enter, it seems he may break open the house to remove the force. And if after such entry made, the justice shall find such force, he shall cause the offenders to be arrested.

The justice hath no power to commit the offender to jail, unless he do it upon his own view of the fact, and not upon the jury finding the same afterwards.

And if offenders, being in the house at the coming of the justice, shall make no resistance, nor make any shew of force, then the justice cannot arrest them or remove them at all upon such view.

But if the force be found afterwards, by the enquiry of the jury, the justice may bind the offenders to the peace; if they be gone, he may make his warrant to take them, and may afterwards send them to jail until they have found sureties for the peace.

The party ousted cannot be restored to his possession by the justice's view of the force; nor unless the same force be found by the enquiry of a jury.

If the defendant be not present, he ought to be called to answer for himself; and if the defendant tender a *traverse* of the force, the justice ought not to make any restitution till the traverse be tried.

If the defendant shall either traverse the entry or the force, or plead that he has been three years in possession, the justice may summon a jury for the trial of such traverse. This traverse must be tendered in writing, and not by a bare denial of the fact in words, for thereupon a *venire facias* must be awarded, a jury returned, the issue tried, a verdict found, and judgement given and costs and damages awarded; and there must be a record, which must be in writing to do all this and not a verbal plea.

The traverse may be tried the next, but not the same day; and he who tenders the traverse, shall bear all the charges of the trial, and not the state, or the party prosecuting.

If the forcible entry or detainer be found before the justice, then the justice may break open the house by force to reseize the same; and so may the sheriff do, having the justice's warrant.

FREE NEGROES.

Persons transporting, or causing to be transported forcibly out of the state of Maryland, any free negro or mulatto, knowing them to be free, shall forfeit and pay the sum of eight hundred dollars for every negro or mulatto so transported; one half to go to the county, the other to the informer. 1796, *c.* 67, *s.* 15.

If the sum be not paid, or secured to be paid, within thirty days after judgement, then the offender may be adjudged to serve on the roads for any period not exceeding five years. *ibid.*

The same provision exists with regard to persons transporting out of the state negroes and mulattoes who are at a certain age entitled to freedom, and selling them as slaves for life, or for a longer time than they have to serve by law. *ibid.*

Persons bringing free negroes or mulattoes into the state, or any person bound to service for a term of years only, and selling them as slaves for life, or for any longer time than by law they are bound to serve, are subject to the same penalty and pains. *ibid. s.* 16.

Free negroes selling or giving away their certificates of freedom to slaves, (by means of which such slaves may be enabled to abscond from the service of their masters or owners) are liable to an action in a court of law; and on conviction, are subject to a fine not exceeding three hundred dollars; and in case the fine is not paid or secured to be paid within thirty days, the court may adjudge such free negro to be sold at public vendue for any term not exceeding seven years, and the money arising from such sale shall be paid to the person or persons whose slave shall have absconded by means of such certificate. *ibid. s.* 18.

Free negroes or mulattoes living idle, without any visible means of maintenance, or going at large through a county, without any visible means of subsistence, may be apprehended by a warrant from a judge or justice of the county, and compelled to give security for good behavior in a sum not exceeding thirty dollars: And if such free negro or mulatto cannot give such security, the judge or justice may order them to depart the state within five days, and if they refuse to comply, or after leaving the state shall again return within six months, they may be again taken up, and committed to jail; and if within twenty days

afterwards they do not pay their prison charges, the sheriff with the approbation of any two justices of the peace of the county, may sell such persons to serve for a period of time not exceeding six calendar months. *ibid. s.* 20.

Form of a Warrant to apprehend a free Negro or Mulatto, being idle, without any visible means of maintenance.

MARYLAND, —— COUNTY, TO WIT:

Whereas information upon oath (*or affirmation*) hath been made to me the subscriber, one of the justices of the peace in and for said county, that A. B. a free negro (*or mulatto*) has been found living idle, without any visible means of maintenance, (*or, going at large through the county without any visible means of subsistence,*) contrary to the act of Assembly in such case made and provided. You are hereby authorised and required to take the said A. B. and bring him before me or some other justice of the peace of the county aforesaid, to enter good security in a recognizance for his good behavior, agreeably to the act of Assembly entitled, "An act relating to negroes, and to repeal the acts of Assembly therein mentioned"—hereof fail not. Given under my hand and seal, this —— day of ——, ——.

J. S. Seal.

To J. B. Constable.

Form of a Recognizance in such case.

State of Maryland } MARYLAND ——COUNTY, TO WIT:
vs. } On this —— day of ——, before
A. B. ——— $30 } me the subscriber, one of the justi-
C. D. ——— $30 } ces of the peace in and for said county, appears A. B. a free negro *(or mulatto,)* and acknowledges himself to owe and stand justly indebted to the state of Maryland, in the sum of thirty dollars current money; at the same time also appears before me C. D. and acknowledges himself to owe and stand justly indebted to the state aforesaid, in the sum of thirty dollars like money, which they respectively yielded and granted should be made and levied of their goods and chattels, lands

and tenements, for the use of —— county; upon condition nevertheless, that if the said A. B. shall well and truly demean himself as an honest citizen ought, and behave in all things according to law and right, then this recognizance to be void and of none effect, otherwise to be and remain in full force and virtue in law.

Witness my hand. J. S.

GAMING.

No E. O. A. B. C. L. S. D. X. Y. Z. faro table, or any other device whatever, except billiard-tables, for the purpose of gaming for money, *or any other thing*, shall be set up, kept or maintained, in any house, *or at any place whatever*, on pain of forfeiting such tables or devices, and of forfeiting moreover, for every offence, the sum of two hundred dollars, upon conviction. 1803, *c.* 75, *s.* 1.

Associate justices, and justices of the peace of this state are bound, upon complaint made, information given, or on their own view, to suppress and prevent the playing at any of the abovementioned tables, or any such other device for gaming; and if resistance shall be made to their authority, the said justices shall commit the person or persons so offending to the custody of the sheriff, or any constable of the county, who may, if necessary, summon the *posse comitatus* to his assistance, to enforce the execution of the law. *ibid. s.* 2.

It is likewise the duty of the justices aforesaid, on complaint made, information given, or on their view, of any person so offending, to issue a warrant to the sheriff, deputy sheriff, or any constable of the county, to take the offender, and compel him to enter into recognizance in the penalty of four hundred dollars, with security to be approved of by the justice, for his personal appearance at the next county court; and the justice taking the recognizance must make return thereof to the clerk of the county court of his county before the next meeting of the said court. *ibid. s.* 3.

Form of a Warrant to apprehend a person for keeping a Gaming-Table contrary to law.

MARYLAND, —— COUNTY, TO WIT:

Whereas information hath this day been given (*or on view, or complaint made*) to me the subscriber, one of the justices of the peace for the state of Maryland, in and for the county aforesaid, that a certain A. B. has set up and does now keep an (E. O. A. B. C. L. S. D. X. Y. Z. *aro, other table, or device*) for the purpose of gaming for (*money or any other thing,*) at the house of a certain C. D. (*or any other place,*) contrary to the act of Assembly in such case made and provided; you are hereby authorised and required to take the body of the said A. B. and have him before the subscriber or some other justice for said county, to enter good security in a recognizance, agreeably to the act of Assembly, entitled, "A supplement to an act, entitled, an act to prevent excessive gaming"—hereof fail not. Given under my hand and seal this —— day of ——, ——.

J. S. Seal.

To (*the sheriff, deputy sheriff, or any constable of said county.*)

Form of a Recognizance in such case.

State of Maryland vs. A. B. —— $400 E. F. —— $200

MARYLAND, —— COUNTY, TO WIT: On this —— day of ——, ——, before me the subscriber one of the justices of the peace in and for said county, appears A. B. and acknowledges himself to owe and stand justly indebted to the state of Maryland, in the sum of four hundred dollars current money; at the same time also appears before me E. F. and acknowledges himself to owe and stand justly indebted to the state aforesaid, in the sum of two hundred dollars like money, which they respectively yielded and granted should be made and levied of their goods and chattels, lands and tenements, for the use of the said state; upon condition nevertheless, that if the said A. B. shall make his personal appearance at our next county court, before the justices thereof, to be held at the court-house in ——, in and for said county, on

the —— *(Monday)* in ——next, and then and there answer what shall be alledged against him, more particularly for keeping an *(E. O. or other)* gaming table, then this recognizance to be void and of none effect; otherwise to be and remain in full force and virtue in law.

Witness my hand. J. S.

GOVERNMENT.

To form a correct idea of the broad basis upon which all authority in the administration of justice stands, it is necessary that a man should have some notion of the origin and form of government; and the compiler has considered it as his special duty to lay down in this book an outline of the structure of the political system of the state of Maryland, and a concise sketch of its relations with respect to the national government.

"In order to gain a clear and just idea of the design and end of government, let us suppose a small number of persons settled in some sequestered part of the earth, unconnected with the rest, they will then represent the first peopling of any country, or of the world: In this state of natural liberty, society will be their first thought. A thousand motives will excite them thereto; the strength of one man is so unequal to his wants, and his mind so unfitted for perpetual solitude, that he is soon obliged to seek assistance and relief of another, who in his turn requires the same. Four or five united would be able to raise a tolerable dwelling in the midst of a wilderness, but *one* man might labor out the common period of life without accomplishing any thing; when he had felled his timber he could not remove it, nor erect it after it was removed; hunger in the mean time would urge him from his work, and every different want call him a different way. Disease, nay even misfortune, would be death, for though neither might be mortal, yet either would disable him from living, and reduce him to a state in which he might rather be said to perish than to die.

"Thus necessity, like a gravitating power, would soon form our newly arrived emigrants into society, the reciprocal blessings of which, would supersede, and render the obligations of law and government unnecessary while they remained perfectly just to each other; but as nothing

but heaven is impregnable to vice, it will unavoidably happen, that in proportion as they surmount the first difficulties of emigration, which bound them together in a common cause, they will begin to relax in their duty and attachment to each other; and this remissness will point out the necessity of establishing some form of government to supply the defect of moral virtue.

"Some convenient tree will afford them a state-house, under the branches of which the whole colony may assemble to deliberate on public matters. It is more than probable that their first laws will have the title only of *Regulations*, and be enforced by no other penalty than public disesteem. In this first parliament every man by natural right will have a seat.

"But as the colony increases, the public concerns will increase likewise, and the distance at which the members may be separated, will render it too inconvenient for all of them to meet on every occasion as at first, when their number was small, their habitations near, and the public concerns few and trifling. This will point out the convenience of their consenting to leave the legislative part to be managed by a select number chosen from the whole body, who are supposed to have the same concerns at stake which those have who appointed them, and who will act in the same manner as the whole body would act were they present. If the colony continue encreasing, it will become necessary to augment the number of the representatives, and that the interest of every part of the colony may be attended to, it will be found best to divide the whole into convenient parts, each part sending its proper number: and that the *elected*, might never form to themselves an interest separate from the *electors*, prudence will point out the propriety of having elections often: because as the *elected* might by that means return and mix again with the general body of the *electors*, in a few months their fidelity to the public will be secured by the prudent reflection of not making a rod for themselves. And as this frequent interchange will establish a common interest with every part of the community, they will mutually and naturally support each other, and on this (not on the unmeaning name of King) depends the *strength of government; and the happiness of the governed.*

"Here then is the origin and rise of government; namely, a mode rendered necessary by the inability of

moral virtue to govern the world; here too is the design and end of government, viz. freedom and security. And however our eyes may be dazzled with show, or our ears deceived by sound; however prejudice may warp our wills, or interest darken our understanding, the simple voice of nature and reason will say, it is right.

"Some writers have so confounded society with government, as to leave little or no distinction between them; whereas they are not only different, but have different origins. Society is produced by our wants, and government by our wickedness; the former promotes our happiness *positively* by uniting our affections, the latter *negatively* by restraining our vices. The one encourages intercourse, the other creates distinctions. The first is a patron, the last is a punisher.

"Society in every state is a blessing, but government even in its best state is but a necessary evil; in its worst state an intolerable one; for when we suffer, or are exposed to the same miseries *by a government*, which we might expect in a country *without government*, our calamity is heightened by reflecting that we furnish the means by which we suffer. Government, like dress, is the badge of lost innocence; the palaces of kings are built on the ruins of the bowers of paradise. For were the impulses of conscience clear, uniform and irresistably obeyed, man would need no other lawgiver; but that not being the case, he finds it necessary to surrender up a part of his property to furnish means for the protection of the rest; and this he is induced to do by the same prudence which in every other case advises him out of two evils to choose the least. *Wherefore*, security being the true design and end of government, it unanswerably follows that whatever *form* thereof appears most likely to ensure it to us, with the least expence and greatest benefit, is preferable to all others."

The foregoing lucid observations on Government, are from the pen of an eminent and celebrated writer. They have been selected, not because the people of Maryland instituted their political system in such manner; but to shew precisely what are the relations between the government and the governed, and whence the former derives its authority.

Maryland, it is well known, was originally a British province; and became independent by means of the American Revolution. Her constitution, like most others of

the United States, recognizes three distinct departments of government, to wit: The legislative, the executive, and the judicial. The legislative department consists of a House of Delegates and a Senate: The House of Delegates is elected yearly immediately by the people of the different counties; four Delegates being allowed to each county in the state, which are nineteen in number; besides these, the cities of Annapolis and Baltimore are privileged to elect two Delegates each. The Senate is chosen every five years by electors selected by the people from among themselves; its number amounts to fifteen, nine of them from the Western and six from the Eastern Shore of the state. Vacancies occasioned by death or otherwise in the Senate are filled up by a majority of the votes of the remaining Senators. The Executive Department consists of a Governor and Council, both chosen annually by the Senate and House of Delegates. The Council are five in number. The Governor is President of the Council in virtue of his office; and in his absence, the person having the highest number of votes when elected, presides in his stead. The judicial Department consists of a General and County Courts, a Court of Appeals, and a Court of Chancery; the judges of which hold their offices during good behavior.

The Legislature enacts all laws, which it is the duty of the Governor to sign without the power of a negative.

The Executive makes all appointments to offices civil and military, except a few, which the legislature have retained the power of filling up. [*See Levy Courts.*]

It is the province of the judicial department to decide all matters of controversy (by means of jury trial) between citizen and citizen, in civil and criminal matters. For this purpose the state is divided into districts, with a county court for each county in a district, from the decisions of which an appeal lies to the General Court.

Inferior crimes and civil suits for debt or damages under ten pounds current money, are cognizable by justices of the peace, who have various and manifold powers under the laws, as will be seen by reference to the different heads of this book.

The right of suffrage is as free in Maryland as the most ardent lover of liberty could wish it. Every free white male citizen of the age of twenty-one years, and having resided one whole year within any one county of the state previously to the day of election, is entitled to

vote for Delegates, Congressmen, Electors of President and Vice-President, and Electors of the state Senate, without possessing any property whatever. But although no pecuniary qualification is required in the voter, that is not the case with regard to the elected. State Senators must be worth £1000; and Delegates £500 each.

The Delegation of the people of Maryland is not founded on the ratio of population, but on *Counties*; each county in the state being entitled to four Delegates; whereas the population of some of the counties is three or four times as large as that of some others.

The Government of Maryland has no relations with foreign powers as a separate and independent state. All matters of that kind are vested in the General Government, which has the power of declaring war and making peace, concluding treaties, regulating commerce, &c. &c. Nevertheless, Maryland, in common with her sister states, has her due weight in the national councils; she sends two Senators and nine Representatives to Congress, and has her proper number of votes in the election of president and vice-president.

Thus much it has been thought necessary to lay down here, for the better information of those whose opportunities have not permitted them to become in any tolerable degree acquainted with our system of government. Did room permit, the compiler would enter more at large into the subject; but a minute detail of our form of government, in all its ramifications, would of itself occupy no trifling volume; and, in truth, would be of great service to the people of the state.

HAWKERS AND PEDLARS.

Every person carrying goods, wares and merchandise, for sale from place to place, shall be deemed a hawker or pedlar. 1 84, *c.* 7, *s.* 6.

Such persons, before they sell, shall take out license from the county courts, for which they shall pay the sum of six pounds, besides five shillings to the clerk; and the clerks must return annually, on or before the first of October, lists of such licenses to the treasurer, and the sheriff shall, at the same time, pay all monies over to the treasurer which have been received for such licenses. *ibid.*

Hawkers or pedlars travelling and selling, or offering

for sale, goods, &c. without such license, forfeit £10. *ibid.*

Persons travelling with linen, flax, hemp, or thread, the growth or manufacture of the state of Maryland, and selling or bartering the same, are not by law deemed hawkers and pedlars. *ibid.*

Any person may take dry goods, wares or merchandise, manufactured within the state, to any part thereof for sale, and may there sell or barter the same, without any license. 1799, *c.* 46.

HOMICIDE.

If a mortal stroke shall be given on one Shore of Maryland, and the party stricken shall die thereof within a twelve month and a day therefrom on the other Shore of this state, the party giving such mortal stroke, and all aiders, &c. may be tried by the general court of either shore, or by justices of oyer and terminer, sitting either in the county where the stroke shall be given, or where the death shall happen. 1789, *c.* 22, *s.* 2.

If a mortal stroke shall be given on the waters of the Chesapeake, and the party stricken shall die thereof within a year and a day, or if a mortal stroke shall be given in any part of this state, and the party so stricken shall die thereof within a twelve month and a day on the said waters of the Chesapeake, the party, and all aiders, &c. may be tried in the general court of either shore, or before justices of oyer and terminer, sitting in any county on either shore. *ibid.* *s.* 3.

If a mortal stroke shall be given on the waters of any river or creek dividing any counties of this state, and the party stricken shall die thereof within a twelvemonth and a day either on the waters of any such river or creek or on land in this state, or if a mortal stroke shall be given on land in this state and the party stricken shall, within a twelvemonth and a day, die thereof on the waters of any river or creek dividing any counties of this state, in such cases the party, and all aiders, &c. may be tried in the general court of the shore where the stroke was given, or of the shore where the death shall happen, or before justices of oyer and terminer, sitting in either of the counties divided by the waters of the rivers or creeks, as aforesaid, *ibid.* *s.* 4.

INDENTURE.

Under this head the compiler takes occasion to introduce a second form of Indenture where a child is bound out as an Apprentice by the Father. The form under the head of "*Apprentices*," (page 101,) is better calculated for a boy who *binds himself out* with the *consent* of his father or parents.

Form of an Indenture where a child is bound out by the Father.

This Indenture, made this —— day of ——, in the year ——, witnesseth, That A. B. of —— county hath put and placed, and by these presents doth put and bind out his son C. B. (who on the —— day of —— next will be of the age of —— years,) as an apprentice to A. W. to learn the art, trade or mystery of ——; the said C. B. after the manner of an apprentice, to dwell with and serve the said A. W. from the day of the date hereof until the —— day of ——, in the year, &c. at which time the said apprentice, if he should be living, will be twenty-one years of age; during all which time or term the said apprentice his said master well and faithfully shall serve; his secrets keep, and his lawful commands every where at all times readily obey; he shall do no damage to his said master, nor wilfully suffer any to be done by others; and if any to his knowledge be intended, he shall give his master seasonable notice thereof; he shall not waste the goods of his master, nor lend them unlawfully to any; at cards, dice, or any other unlawful game, he shall not play; fornication he shall not commit, nor matrimony contract, during the said term; taverns or places of gaming he shall not frequent; he shall not drink or swear on any account; from the service of his said master he shall not absent himself, but in all things, and at all times, he shall carry and behave himself as a good and faithful apprentice ought, during the whole time or term aforesaid.

And the said A. W. on his part, doth hereby promise, covenant and agree, to teach and instruct the said apprentice, or cause him to be taught and instructed, in the art, trade or calling, of a ——, by the best way or means he can, and also to teach and instruct the said apprentice, or cause him to be taught and instructed, to read and write,

and cypher as far as the rule of three, if the said apprentice be capable to learn; and shall well and faithfully find and provide for the said apprentice good and sufficient meat, drink, cloathing, lodging, and other necessaries, fit and convenient for such an apprentice, during the term aforesaid, and at the expiration thereof, shall give unto the said apprentice, two suits of wearing apparel, one suitable for Sundays, and the other for working days.

In testimony whereof the said A. B. and A. W. have hereunto interchangeably set their hands and seals, the day and year herein first before written.

Signed, sealed and delivered, in the presence of us, E. F. G. H. } A. B. Seal. A. W. Seal.

INSOLVENT DEBTORS.

Any person committed or charged in execution, or for want of special bail, having actually remained in prison thereon 20, and not more than 60 days, may petition any three justices of the county for his discharge. 1774, c. 28, s. 1, 4.

Such justices shall appoint a time of meeting, not less than 30, or more than 40 days, at the court-house or gaol, and certify in writing such appointment to the sheriff. *ibid.* s. 1.

The sheriff shall, 20 days before such meeting, fix one copy of such certificate at the door of the county clerk's office, and another at the prison door. *ibid.*

The said justices, or two of them, shall attend, and the sheriff shall attend with the prisoner, and make known the cause of his imprisonment, and the time he has been imprisoned. *ibid.*

Unless it appears to the said justices so attending, by such cause of commitment, or by the allegation on oath of a creditor, that such prisoner's debts amount to the value of £200 sterling, such prisoner may deliver to the sheriff a schedule of his whole estate, &c. and shall receive from him a duplicate thereof, under his hand, and the said justices shall subscribe their names as witnesses thereto, and administer to the prisoner an oath to the truth thereof,

and transmit the same to the clerk of the county, to be preserved in his office for the information of the creditors. *ibid.*

The estate of such prisoner shall be vested in the sheriff, who is to sell the same, and, (after deducting 1*s.* 4*d.* per day for keeping such prisoner, and 7 1-2 *per cent.* commission) shall apply the residue to the payment of the debts. *ibid. s.* 2.

Where the trust is not fully executed, the estate, &c. is transferred to the succeeding sheriff, who is to complete the same, and the former sheriff, or his executors, are to account with such succeeding sheriff, who may, in default thereof, bring an action in his own name against them. 1797, *c.* 117.

The sheriff is not obliged to sue for debts due to the prisoner unless indemnified as to charges thereon. 1774, *c.* 28, *s.* 3.

He shall pay what may be recovered in proportion, saving necessary apparel and utensils of trade not exceeding *£.*5, to be valued by the aforesaid justices. *ibid. s.* 2, 3.

Notice must be given before suits are brought, and creditors having been paid, to refund to the others in proportion. *ibid. s.* 4.

The time from the discharge till the bringing of the suit, (if brought within one year therefrom,) is not to be affected by any act of limitation. *ibid.*

After the delivery of such schedule, &c. on oath, and the transmission thereof, the said justices, or two of them, shall, by their order in writing, command the sheriff to set such prisoner at liberty. *ibid. s.* 5.

Such order shall be sufficient to discharge and indemnify the sheriff against any escape or other action, and if sued, he may plead the general issue, and give the act, &c. in evidence. *ibid.*

The creditors may, notwithstanding such discharge, at any time afterwards, without a writ of *scire facias*, sue out on their judgements writs of *fieri facias* or attachment for the balances due against any lands, &c. acquired or possessed by such insolvent person by descent, gift, devise, bequest, or in a course of distribution. *ibid. s.* 6.

If such person shall be arrested or imprisoned on a judgement for any debt, &c. contracted before such discharge, the court from which the process issues may discharge such prisoner on motion. *ibid. s.* 7.

And if arrested on process for the recovery of any debt, &c. so contracted, may take his common appearance without bail. *ibid.*

The discharge of such prisoner not to acquit any other person from such debt, &c. *ibid.*

The justices shall not relieve from confinement a person committed for any fine, forfeiture, or costs of prosecution, November, 1792, *c.* 51.

If a creditor shall on the day appointed, appear, before the prisoner's discharge, and allege that such prisoner has sold or lessened his property to defraud his creditors, and shall give bond in the penalty of £ 50, to be approved by the justices, to pay all damages, &c. which the prisoner may sustain by reason of such objection, if over-ruled, the justices shall not discharge such prisoner, but shall stay further proceedings, and return the bond to the next county court. 1774, *c.* 28, *s.* 8.

The county court shall hear and determine in a summary way such allegation of the creditor; if against the prisoner, he shall have no benefit of the act, and judgment shall pass against him for costs; if against the creditor, the prisoner shall be discharged, on delivering in open court such schedule, and taking the oath as aforesaid, and all his estate shall be vested in the sheriff as if he had been discharged by the justices as aforesaid. *ibid.*

The court may ascertain what damages the prisoner has sustained by the false allegation of such creditor, and adjudge them to him, with costs, so as not to exceed the penalty of the bond. *ibid.*

The damages and costs so recovered are not to be vested in the sheriff or subjected to the creditors. *ibid. s.* 10.

The court may order the prisoner to be brought in, and may remand him, and appoint an early time for the trial of the issue. *ibid. s.* 9.

Persons convict of perjury in swearing under the act shall suffer as in cases of wilful and corrupt perjury, shall be liable to be taken on process *de novo*, and charged in execution for their debts, and shall never after have the benefit of the act. *ibid. s.* 11.

Form of a Petition to three Justices, by a Prisoner.

——COUNTY GAOL:

To J. S. H. K. and F. H. Gentlemen, Justices of the Peace for said county.

The petition of B. D. humbly sheweth, that your petitioner hath actually remained in the gaol of said county since the —— instant, for debts which he is unable to pay; that he is willing to comply with the requisites of the act of Assembly, entitled, "An act for the relief of Insolvent Debtors;" and prays you gentlemen to appoint a time and place for his discharge under said act: And your petitioner, as in duty bound, will ever pray, and so forth.

B. D.

(January 17th, 1805.)

Form of the Justices' Notice to meet, for the purpose of discharging the Prisoner.

We the subscribers, justices of the peace for —— county, have appointed to meet at the court-house in —— town in said county, on *(Monday)* the —— day of —— next, to discharge B. D. an insolvent debtor confined in the gaol of said county, agreeably to the prayer of his petition and the act of Assembly, entitled, "An act for the relief of Insolvent Debtors." The creditors of said B. D. are hereby desired to take notice of the time and place appointed by us for his discharge as aforesaid. Given under our hands, this —— day of ——, ——.

J. S.
H. K.
F. H.

To the Sheriff of said county.

Form of a Schedule to be delivered to the Sheriff by the Prisoner.

A Schedule of the whole Estate, Debts and Credits of B. D. an Insolvent debtor.

A dutch oven,

An Iron Pot,
A Skillet,
1 Frying-pan,
A small Tub,
2 Tin Cups,
A. B.—on Bond, ballance to this day, £11 19 6
C. D. —— on Account, 1 17 4

Form of the Oath to be delivered to the Prisoner, previous to his discharge.

I A. B. do solemnly swear *(or affirm, if a Quaker)* that the schedule which I have delivered to the sheriff of —— county, doth contain a full account to the best of my knowledge and remembrance, of my whole estate, both real and personal, or that I have any title to, or interest in, and of all debts, credits and effects whatsoever, which I, or any in trust for me, have, or at the time of my petition had, or am or was in any respect entitled to, in possession, remainder, or reversion; and that I have not, directly or indirectly, at any time since my imprisonment, or before, sold, leased, or otherwise conveyed, disposed of, or intrusted all or any part of my estate, goods, stock, money or debts, thereby to defraud my creditors, or to secure the same to receive or expect any profit or advantage thereof; so help me God.

Form of a Bond, to be given by a Creditor who appears against the Prisoner on the day appointed for his Release, and makes allegation that the Prisoner has sold or lessened his property, to defraud his creditors.

Know all men by these presents, that we A. B. and C. F. of —— county and state of Maryland, are held and firmly bound unto B. D. of the county and state aforesaid, in the sum of £50 current money, to be paid to the said B. D. his certain attorney, administrators and assigns; to

which payment well and truly to be made and done, we bind ourselves, our heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated this —— day of ——, ——.

Whereas the above named B. D. hath applied to three of the justices of the peace for the county of ——, to be discharged from his debts under and in virtue of the act of Assembly of March session, 1774, chapter 28, entitled, "An act for the relief of Insolvent Debtors:" And whereas the said A. B. a creditor of the said B. D. hath alledged that the said B. D. hath directly or indirectly lessened or otherwise disposed of his property, &c. &c. and has objected to the discharge of the said B. D. under said act. Now the condition of this obligation is such, that if the above bound A. B. shall pay and satisfy all damages and costs the said B. D. shall sustain or be put to by reason of the said A. B. objecting against his discharge on the above recited allegations, in case they shall be over-ruled, then the above obligation to be void and of none effect, otherwise of full force and virtue in law.

A. B. Seal.
C. F. Seal.

Signed, sealed, and delivered in the presence of *(the justices attending.)*

There is, in Maryland, another mode for relieving insolvent debtors, who owe more than £200 sterling. This is by petition to the legislature of the state. It is customary, in such case, for the person intending so to apply for relief, to give six weeks notice in some newspaper of the state, nearest to the place where he resides, of his intention, before the sitting of the legislature; which advertisement may be couched in the following terms:

Form of an Advertisement, notifying an intention to petition the Legislature for an Act of Insolvency.

Notice is hereby given,

That the subscriber intends to petition the General Assembly of Maryland, at their next session, for an act of insolvency, to release him from debts which he is unable to pay.

A. B.

(June 1st, 1805.)

As the act of Assembly in such cases is new-modelled yearly, it would be fruitless to state here the provisions of any one of the acts on the subject. It may suffice generally to remark, that the principal requisites which have been necessary to entitle a person to the benefit of such acts hitherto are, that he should deliver up his property for the benefit of his creditors generally, and that he should have been a citizen and resident of the state of Maryland for two whole years next preceding the passage of the act under which he claims.

Heretofore the chancellor was empowered to carry these insolvent laws into effect; but at the session of the General Assembly of Maryland which commenced in November, 1804, the power was transferred to the county courts of the different counties where the insolvents reside. On application to the chancellor, or to the courts, for the benefit of the act, it is necessary to file a petition, which may be in the following terms:

Form of a Petition to the County Court, for the benefit of an Act of Insolvency.

To the honorable, the County Court of —— County, now sitting,

The petition of A. B. an insolvent debtor of —— county, respectfully sheweth, that he presented a petition to the last General Assembly of Maryland, praying for the benefit of an act of insolvency, and that he is included in the act passed upon that subject, entitled, "An act for the relief of sundry insolvent debtors;" your petitioner therefore prays the honorable court to extend to him the benefit of the said act upon his complying with the several provisions thereof: And your petitioner herewith exhibits a schedule of all his property, real, personal, and mixed, so far as he can ascertain the same: Also, a list of his creditors, with the sums of money to them respectively due, so far as he can ascertain the same; which schedule of property and list of creditors are upon oath, and which your petitioner prays may be taken as a part of this his petition; and your petitioner further states to this honorable court, that he is ready to exhibit proof of his being a citizen and of his having resided the last two years next preceding the passage

of the beforementioned act of Assembly in the state of Maryland, and so forth.

(*May 25th*, 1805.) A. B.

INTEREST.

Legal interest payable in money, in the State of Maryland, is *six per cent*; payable in tobacco, or other goods, it is *eight per cent.*

The following short methods of calculating Interest, at 6 per centum per annum, for any given number of months, are recommended to the attention of men of business. They are much more expeditious than any which have been hitherto published within the writer's knowledge, and their accuracy may be relied on with certainty.

1. To find the Interest of Pounds, Shillings, Pence, &c. in Dollars and Cents for any given number of months. Multiply the given sum by the number of months. Divide the pounds and half the shillings in the product by 6. The quotient will be the answer in Cents.

EXAMPLE.

What is the Interest of £.75 10 6, for 5 months, at 6 per centum per annum, in Dollars and Cents?

Operation. 75 - 10 - 6
5

6 | 377 - 12 - 6

Answer $ 6 - 29 Cents.

AGAIN.

What is the Interest of £.198 - 19 - 9 for 7 months, at 6 per centum per annum in Dollars and Cents?

Operation. 198 - 19 - 9
7

6 | 1392 - 18 - 3

Answer $ 23 - 21 Cents.

2. To find the Interest of Dollars and Cents in Pounds, Shillings, Pence, &c. for any given number of months. Multiply the given sum by 3, and the product by the number of months. Strike off four figures to the right hand

in the last product for the Decimal parts of Shillings. The other figures will be the shillings.

EXAMPLE.

What is the Interest of $ 157 - 60 Cents for 8 months, at 6 per centum per annum, in Pounds, Shillings, Pence, &c.

Operation:

157 - 60
3
---
472 - 80
8
---
20 | 37 - 8240
12
---
1 - 17 - 9 - 8880
4
---
3 - 5520

Answer £. 1 17 9 3-4

AGAIN.

What is the Interest of $ 579 - 95 Cents, for 7 months, at 6 per centum, per annum, in Pounds, Shillings, Pence, &c?

Operation.

579 - 95
3

173985
7
---
20 | 121 - 7895
12
---
6 - 1 - 9 - 4740
4
---
1 - 8960

Answer £. 6 1 9 1-4

3. To find the Interest of Pounds, Shillings, Pence, &c. in Pounds, Shillings, Pence, &c. for any given number of months. Multiply the given sum by half the number of months and divide the product by 100.

EXAMPLE.

What is the Interest of £.75 - 10 - 6 for 5 months, at 6 per centum per annum, in Pounds, Shillings, Pence, &c.?

Operation. 75 - 10 - 6
2 1-2

151 - 1 - 0
37 - 15 - 3

1 - 88 - 16 - 3
20

17 - 76
12

9 - 15

Answer £.1 - 17 - 9

AGAIN.

What is the Interest of £. 75 - 11 - 0 for 8 months, at 6 per centum per annum, in Pounds, Shillings, Pence, &c.?

Operation. 75 - 11 - 0
4

3 - 02 - 4 - 0
20

0 - 44
12

5 - 28
4

1 - 12

Answer £.3 - 0 - 5 - 1-4

4. To find the Interest of Dollars and Cents, for any given number of months, in Dollars and Cents. Multiply the given sum by half the number of months—strike off the right hand figures from the product, and those on the left will be the answer in Cents.

EXAMPLE.

What is the interest of $579 - 95 Cents for 7 months, at 6 per centum per annum, in Dollars and Cents?

Operation. 579 - 95
3 1-2

1739 - 85
289 - 97

$ 20 - 29 - 82
Answer $ 20 - 29 Cents.

AGAIN.

What is the Interest of $ 157 - 60 Cents, for 8 months at 6 per centum per annum, in Dollars and Cents?

Operation. 157 - 60
4

6 - 30 - 40
Answer $ 6 - 30 Cents

[*Note.* It is to be observed that the foregoing calculations of the first and second "EXAMPLES" are founded on Virginia currency, and that to reduce the products of those cases to Maryland currency, those of the first description must be multiplied by 4 and divided by 5, and so, on the contrary, with those of the second description.]

INTESTATE REAL ESTATES.

When the parties who are entitled to the estate of an intestate, cannot agree upon a division thereof, or in case any person entitled to any part be a minor, application may be made to the court of the county where the estate lies, and the court shall appoint and issue a commission to five sensible, discreet men, who before they act, shall take an oath, to be annexed to the commission, well and truly, and without favor, partiality or prejudice, to adjudge and determine whether the estate will admit of being divided, without injury and loss to all parties entitled, and ascertain the value of such estate in current money. 1786, *c.* 45, *s.* 8.

Form of a Commission for valuing, &c. the Estate of an Intestate.

—— County, To Wit:

The state of Maryland to Messrs. A. B. C. D. E. F. G. H. and I. K. of —— county, gentlemen, greeting. Whereas L. M. and C. M. his wife, N. O. P. Q. and R. S. by their petition to the justices of —— county court, begun and held at the court-house in —— town, in and for the said county, on the *(first Monday)* of *(February)* last, did set forth, *(here insert the contents of the petition, see page 271;)* and it was considered by the justices aforesaid that the petitioners are entitled to a commission as prayed, and having appointed L. M. guardian to I. and K. these are therefore to authorise, empower and direct you, the said A. B. C. D. &c. or a majority of you, after giving reasonable notice to all persons concerned, before any proceedings be had by you in the execution of this commission, and after having taken the oath hereunto annexed, to adjudge and determine whether the estate herein before described will admit of being divided, without injury and loss to all the parties entitled, and to ascertain the value thereof in current money: And if the said estate can, in your opinion and judgement, or in the opinion and judgement of a majority of you, be divided without loss and injury to all the parties entitled, that then you or a majority of you are to cause the same to be surveyed and laid off by the county surveyor, or such other person as you may think qualified, for the several parties, and make partition of the same fairly and equally in value between all the parties interested according to their several and just proportions, and allot to the several parties aforesaid their respective shares of the said land or estate; and if you or a majority of you shall determine that the estate cannot be divided without loss to all the parties, then you are to make return to the justices of the county court aforesaid of your judgement, and the reasons upon which the same is founded, and the real value of the estate in current money, together with this commission. Witness W. C. esquire, chief justice of the said court, the —— day of ——, ——.

Issued the —— day of ——, ——.

W. R. Clerk.

Form of a Certificate of the Oath to be administered to the Commissioners, and annexed to the Commission.

—— County, To Wit:

On the —— day of ——, ——, A. B. C. D. &c. commissioners named in the commission annexed, appeared before me, a justice of the peace for the said county, and severally took the following oath; well and truly, and without favor, partiality or prejudice, to adjudge and determine whether the estate of Y. Z. will admit of being divided without injury and loss to all the persons entitled, and to ascertain the value of the estate in current money; and if the estate can in your opinion and judgement, or in the opinion and judgement of a majority of you, be divided without loss and injury to all the parties entitled, that you will then divide and make partition of the same fairly and equally in value, between all the parties interested, according to their several just proportions, agreeably to the directions of an act of Assembly entitled "An Act to direct descents."

Sworn before J. S.

It frequently occurs that a majority of the commissioners named in a commission do not all appear before any one justice; when that is the case they may be sworn afterwards before another justice, who may enter his certificate thereof at the bottom of the foregoing, in manner following:

Form of an additional Certificate.

—— County, To Wit:

On the —— day of ——, ——, appeared E. F. one of the commissioners named in the foregoing commission, before me, a justice of the peace for the county aforesaid, and took the above oath as prescribed by law.

Sworn before F. H.

By 1799, c. 49, s. 5, the commisioners are empowered in virtue of their commission, to acertain and lay off the widow's dower in and to the lands and tenements of an intestate, before they proceed to divide or value the same, and

the commissioners must make such ascertainment and location of dower a part of their return to such commission.

By 1797, c. 114, the commissioners are directed to take into consideration any incumbrance on the lands, and report the value of the land, subject to the incumbrance.

The court from which the commission issues must appoint guardians, where minors are interested in the estate of an intestate to be valued and divided by commissioners. 1786, *c.* 45, *s.* 8.

Reasonable notice must be given by the commissioners to all parties concerned before any proceeding is had. *ibid.*

No proceedings of the commissioners can be set aside for matter of form. *ibid.*

Children have the right of election, (if of age) successively, to take the estate at the valuation, and pay the others their proportions. *ibid*

Such election must be made at the first court term after the return. 1797, *c.* 114, *s.* 6.

If all the children refuse to make such election, then the estate shall be sold under the direction of the commissioners or a majority of them, for cash or credit, as they and a majority of the persons interested may determine to be most advantageous to all concerned, and the purchase-money shall be justly divided among the several persons interested, according to their respective titles to the estate. 1786, *c.* 45, *s.* 8.

If the commissioners adjudge that the land can be divided without loss to all the parties concerned, they shall cause the lands to be surveyed and laid out by the county surveyor, or such other person as they may think qualified, in case the estate consists of lands ; and the commissioners shall allot to the several parties their respective shares of the land ; and if the estate consists of houses, the commissioners shall make allotment and partition among the parties : And after having executed the commission, the commissioners shall return their proceedings to the next county court to happen thereafter, which shall be ratified or rejected as justice shall dictate, and if ratified, and no appeal by either party, the partition made shall be recorded and be binding ; and if rejected, a new partition shall be made and returned ; and either party may appeal to the chancellor from the judgement of the county court. *ibid.*

If there be more tracts of land than one, the division shall be made so as not to split the several tracts, if it can be done consistently with equality; but if it cannot be exactly done in such mode, then so much of the larger or more valuable tracts of land shall be taken and added to the less valuable, as will make the portion equal in value; and if lands or other estate lie in different counties, then an application may be made to the chancellor, who shall appoint commissioners to make the whole examination and division, or commissioners for each county where the land or other estate lie, as to him may seem most convenient. *ibid.*

Commissioners appointed by the chancellor, are to proceed in the same way as those appointed by the county courts. *ibid*

Form of the Commissioners' Return.

To the honorable the Justices of —— County Court.

In virtue of the powers vested in us by the annexed commission, we certify and return, that in the execution of the said commission we in the first place took the oath accompanying it, and then gave reasonable notice to all parties concerned, of the manner of our proceeding in the execution of said commission, before any other proceeding was had; and that in conformity with such notice we met on the land mentioned in said commission on the —— day of ——, and then and there took into consideration every circumstance relative to said land, and were of opinion, and did so adjudge and determine that the said land could be divided without loss or injury to all the parties concerned, and that we did appoint the surveyor of the county (*or other person, as the case may be*) to survey and lay off the said land, which was surveyed and laid off in our presence; and that we did thereupon ascertain and lay off the widow's dower, and did also make partition and allotment of the said land, fairly and equally in value, between all the parties interested, according to their several just proportions thereof, all which in manner and form, and by courses, metes and bounds, as by the said surveyor's annexed plat and certificate is fully set forth, which plat and certificate we request may be taken as a part of this our return of the execution of the commission aforesaid.

In testimony whereof we have hereunto set our hands, this —— day of ——, ——.

A. B.
C. D.
E. F.
G. H.
I. K

Another form of Commissioners' Return.

To the honorable the Justices of —— County Court, for —— County.

In virtue of the powers vested in us, by the annexed commission, we certify and return, that in the execution of said commission, we in the first place took the oath accompanying it, and then gave reasonable notice to all the parties concerned of the manner of our proceeding in the execution of the said commission, before any other proceeding was had; and that in conformity with such notice we met on the land mentioned in said commission on the —— day of ——, and then and there took into consideration every circumstance relative to said land, and were of opinion, and did so adjudge and determine that the said land could not be divided without loss to all the parties interested, for the following reasons, to wit:

1st. That the said land does not exceed 40 acres. 2d. That the said land is not worth £15 per acre. *(Or for other reasons, as the case may be.)*

And we did further adjudge and determine the real value of the said land, with the improvements, to be four pounds current money per acre.

And we further certify and return, that we ascertained and laid off the widow's dower in the lands and tenements mentioned in said commission, and thereby did assign her the said widow in full of her said dower, two rooms on the cellar floor of the mansion-house of said land, and such a portion and allotment of the said land and by such courses, metes and bounds, as by the annexed plat and certificate is fully set forth, which plat and certificate we request may be taken as a part of this our return of the execution of the commission aforesaid.

In testimony whereof we have hereunto set our hands, this —— day of ——, ——.

A. B.
C. D. &c. *commissioners.*

Form of a Petition to a County Court, for a Commission to value an Intestate's Real Estate.

To the honorable the Justices of —— County Court, for —— County.

The petition of L. M. C. M. N. O. P. Q. and R. S. respectfully sheweth, That Y. Z. of —— county died intestate since the —— day of ——, ——, leaving the following (*children*) heirs at law, namely, C. *(who married L. M.)* one of the petitioners, N. O. P. Q. and R. S. and the said petitioners, who are of the age of twenty-one years, and I. and K. who are infants under the age of twenty-one years; that the said Y. Z. died seized of the following tracts of land, to wit: *Airy* and *Mount Pleasant*, lying and being in —— county; your petitioners therefore respectfully solicit the honorable court to issue a commission for the valuation and division thereof according to the directions of the act of Assembly, entitled, "An act to direct descents;" and your petitioners will pray, and so forth.

L. M.
N. O.
P. Q.
R. S.

(*June 1st*, 1805.)

An appeal may be made, from the chancellor's decision on the commissioners' return, to the court of appeals; but there can be no appeal from the chancellor's decision in cases where the commission issues from the county court. 1785, *c.* 45, *s.* 8.

If the inheritance consists of land not worth more than fifteen pounds ready current money per acre (to be ascertained by the commissioners) the same shall not be divided into any shares less than fifty acres each; and if the land shall not be above that value, and there be not sufficient to distribute to each person entitled fifty acres, and the land is determined to admit of division without loss to all the parties interested, then the land shall be equally divided among such number of the persons entitled, as the quantity of land left by the intestate divided by fifty will give; and the land so divided shall be offered, and if accepted,

belong to the eldest male persons entitled by the course of descent, as by act of Assembly is settled, if the number of males entitled be sufficient to take the whole, and if not, to the eldest females to make the number sufficient to take the whole; and if there be no males, then to the eldest females; and if any person refuses to accept the land as aforesaid, then the same shall be offered to the persons entitled next in seniority, pursuing the rule between males and females as just laid down: And upon such division and acceptance, the persons entitled under the course of descent, who may be left without a share of land, shall in lieu thereof have in money the reasonable and moderate value of the land which would have fallen to their share upon a division among all the persons entitled, to be ascertained by the commissioners aforesaid, and returned to the county court for their confirmation or rejection; which money shall be paid to the persons entitled out of such part of the personal estate left by the intestate, as would, upon a distribution thereof, belong to the persons provided for by accepting a share of land as aforesaid if the same be sufficient, and if not, the deficiency shall be paid equally by the persons having land as aforesaid, and the same shall be a lien and incumbrance on such land until paid, and may be recovered by an action upon the case brought by the parties respectively entitled, wherein it shall be only necessary to charge the person or persons holding the land with money had and received to the use of the plaintiff or plaintiffs, and the sum justly due shall be ascertained and recovered. *ibid. s.* 9.

All sales under the "act to direct descents," must be made agreeably to the order of the court from which the commissions issued, and are not valid until ratified by the court. 1797, *c.* 114.

After payment of the purchase money and ratification of the sale, the commissioners must convey to the purchasers. 1799, *c.* 49, *s.* 3.

When a sale is on credit, the commissioners are to take bonds to the several representatives for their proportions. *ibid. s.* 4.

On the consent of the widow to sell the whole estate, the proportion arising from such sale may be awarded to the widow by the chancellor or county court. *ibid. s.* 6 The consent must be in writing, and shall be filed with the clerk of the county court, or with the register of chancery.

Form of the Widow's Consent in writing, to the Sale of the whole Estate.

Whereas the representatives of A. B. late of —— county, deceased, did obtain out of —— county court, a commission pursuant to the provisions of the act, entitled, "An act to direct descents," in execution of which the commissioners returned to the said court that the said land of the deceased could not be divided without loss to all the parties interested, and the said commissioners being by the said court directed to sell the said land, this is therefore to declare, and I the widow of the said deceased do hereby declare my consent, that the said commissioners do sell the land and tenements of the said deceased, disencumbered of any right or title of dower, reserving to myself such consideration as the said court shall award me in lieu thereof. Witness my hand this —— day of ——, ——.

M. B.

By a supplementary act, 1802, c. 94, s. 1, it is provided that where any of the heirs to an intestates estate sell out their right or title, the purchaser and the remaining heirs, (if they cannot agree upon a division, or in case any person entitled to any part be a minor,) can effect a division in the way already laid down. By section 2, it is provided that the person making an election to take an estate after it has been determined that it cannot be divided without loss, must give bond at the time of making the election, with two or more sufficient securities, to be approved by the court, to the other persons entitled to the estate, for their several proportions of the sum of money at which the estate is valued, which bonds are to bear interest from the date of the election, and to be made payable in such instalments as the court shall direct. By section 3, if any person entitled to make election to take the estate at its valuation shall be absent from the county at the time the election ought to be made, the court are authorised to pass an order, to be published at least four weeks successively in some convenient newspaper, giving notice of the return and confirmation of the commission, and appointing some day in the term next succeeding that in which the said order shall be passed, for such absent person to appear in

court, and make their election; and when it has been proved to the court that publication has been made, and the absent person does not appear, the person next entitled can make his election, and it will be good. By section 5, the bonds taken for the payment of the purchase-money of the estate are made a lien on the lands, until they are wholly paid.

JURORS AND JURY.

The inhabitants of Maryland are entitled to the common law of England, and the trial by jury according to the course of that law. *Declaration of Rights, art.* 3.

In criminal prosecutions every man has a right to a speedy trial by an impartial jury, without whose unanimous voice he cannot be found guilty. *ibid. art.* 19.

The sheriffs of each county in the state are bound to return to the county courts at each term a pannel of forty-eight jurors, out of which twenty-three are to be drawn by ballot to serve as grand jurors during the term; the persons remaining are to serve as petit jurors. 1797, *c.* 87, *s.* 8.

At the opening of the court the twenty-three thus drawn by ballot, are to be sworn upon the grand jury; when the presiding judge instructs them in the articles of their inquiry: They then withdraw to sit and receive indictments, which are preferred to them in the name of the state, but at the suit of any private prosecutor; and they are only to hear evidence on behalf of the prosecution; for the finding of an indictment is only in the nature of an inquiry or accusation, which is afterwards to be tried and determined: And the grand jury are only to enquire upon their oaths, whether there be sufficient cause to call upon the party to answer it. A grand jury however ought to be thoroughly persuaded of the truth of an indictment, so far as their evidence goes; and not to rest satisfied merely with remote probabilities; a doctrine that might be applied to very oppressive purposes. *Blackstone's Commentaries.*

The grand jury are sworn to declare only for the body of the county, and therefore they cannot regularly enquire of a fact done out of the county for which they are sworn, unless particularly enabled by law. *ibid.*

When the grand jury have heard the evidence, if they think it a groundless accusation, they endorse on the back of the bill, "*ignoramus*;" or, (which is the better way,) "not found;" and then the party is discharged without farther answer. But a fresh bill may afterwards be preferred to a subsequent grand jury. If they are satisfied of the truth of the accusation, they then endorse upon it, "a true bill." The indictment is then said to be found, and the party stands indicted. But to find a bill there must be at least twelve of the jury agree; for so tender is the law, that no man can be convicted at the suit of the state of any capital offence, unless by the unanimous voice of twenty-four of his equals and neighbors; that is, by twelve at least of the grand jury, in the first place, assenting to the accusation; and afterwards by the whole petit jury, of twelve more, finding him guilty upon his trial. But if twelve of the grand jury assent, it is a good presentment, though some of the rest disagree. And the indictment when so found is publicly delivered into court.

When an accusation is found by a grand jury, without any bill brought before them, and afterwards reduced to a formed indictment, it is called a *presentment*. A presentment, *generally* taken, is a very comprehensive term; including not only presentments properly so called, but also inquisitions of office, and indictments by a grand jury. A presentment, *properly* speaking, is the notice taken by a grand jury of any offence from their own knowledge or observation, without any bill of indictment laid before them at the suit of the state: As the presentment of a nuisance, a libel, and the like; upon which the officer of the court must afterwards frame an indictment, before the party presented can be put to answer it. *ibid.*

An indictment is a written accusation of one or more persons of a crime or misdemeanor, preferred to, and presented upon oath by a grand jury. *ibid.*

It may be proper to state here, generally, the crimes and misdemeanors which come under the cognizance of a jury. Crimes and misdemeanors are terms of such general import as to comprehend every branch and violation of the public rights and duties of the community in its social aggregate capacity; and in a legal sense crimes denote offices of a deeper and more atrocious dye; while smaller indictable faults and omissions are comprized under the gentler name of misdemeanors. With respect to the first, the following may be noticed;

The obstructing the execution of lawful process; of criminal escapes; of breach of prison; rescue of a prisoner; perjury; subornation of perjury; homicide; mayhem; rape; arson; burglary; and forgery. Of each of these some little notice will here be taken.

The obstruction of lawful process is at all times an offence of a very high and daring nature; but more particularly when it prevents an arrest upon criminal process. By it the offender becomes an accessary in felony, and a principal in high treason.

Escape of a prisoner, by the consent or connivance of the proper officer charged with his safe-keeping, is a serious offence, and subjects the officer to punishment in the same degree as the offence for which the prisoner is committed would on his being found guilty thereof.

Breach of prison by an offender committed for treason or felony, is a crime equal to that for which the commitment was made.

Rescue of a prisoner, is generally the same offence in the person rescuing, as in the case of escapes by consent or connivance of the proper officer charged with the safe-keeping of a criminal.

Perjury, or the administration of an oath in some judicial proceeding to a person who swears wilfully, absolutely and falsely, in a matter material to the issue or point in question, is an offence of much consequence, inasmuch as it militates against the very existence of civil society.

Subornation of perjury, is the procuring another to take a false oath, and is punishable nearly in the same extent as perjury.

Homicide, of all offences, is the most abhorrent to human nature. It consists in the killing of any human creature, and is of three kinds; *justifiable*, *excusable*, and *felonious*. The first has no share of guilt; the second, so little that the taking cognizance of it has ceased; but the third is the highest crime that man is capable of committing against man. Justifiable homicide is distinguished by some unavoidable necessity, or by the duties of an office. Excusable homicide is occasioned either by misadventure, or by the principle of self-preservation; provided the act be simply an act of self-preservation, and not accompanied with any manifestation of revenge, or by the commission of any unlawful transaction. Felonious homicide consists of degrees of guilt that divide the offence into manslaughter and murder. The difference is

principally this, that manslaughter arises from the sudden heat of the passions, or by accident when in the commission of some unlawful act, but without malice, either express or implied. Murder proceeds from the wickedness of the heart, with malice aforethought either express or implied, to which must be added sound memory and discretion. This last offence is contemplated by our laws with the utmost degree of abhorrence, and punished almost throughout the world with death. The words of the Mosaical law very emphatically prohibit the pardon of murderers: It enjoins that no satisfaction shall be taken for the life of a murderer who is guilty of death; but that he shall surely be put to death; for the land cannot be cleansed of the blood that has been shed thereon, but by the blood of him that shed it.

Mayhem is an atrocious offence against the public peace, and consists in cutting off, or disabling any limb or member of another person with malice aforethought and with intent to maim or disfigure such person. The law, in relation to this offence, comprehends the perpetrator, his counsellors, aiders and abettors, in equal degree of criminality.

The commission of rape is a highly aggravated crime, and consists in the carnal knowledge of a woman forcibly and against her will. In deliberations on this detestable crime, it ought to be considered that it is an accusation easily made, difficult to be proved, yet more difficult to be defended by the party accused, though innocent; and that the credibility of the accuser ought to be unsuspected.

Burglary is the breaking and entering into a mansion-house by night, with intent to commit robbery, murder, rape, or other felony. It is a heinous offence, and severely punishable by our laws.

Larceny, or theft generally, is distinguished by law into two sorts; *mixed*, or *compound larceny*; and *simple larceny*. The first consists of theft from one's house or person, and is distinguished from burglary, as that must be the breaking and entering a mansion house by night, &c. Simple larceny is confined to plain theft, unaccompanied with any other atrocious circumstance, and is divided in its extent by the denominations of grand and petit larceny; the first of which is the stealing of articles above the value of twelve-pence, and the latter of articles not exceeding that value. This sum, which divides the extent of larceny, is at all times worthy the reflection and consi-

deration of a jury, as it was made the standard of division at a time when money was at a much higher rate than it is at present.

Forgery is a crime of considerable magnitude. It is destructive of all commerce, and the benefits which society derives therefrom. It consists in the fraudulent making or alteration of writing to the prejudice of another man's right.

With respect to misdemeanors, the following indictable faults and omissions may be noticed:

Riots; affrays; assaults, and batteries; which are in themselves breaches of the peace, and contempts of government; selling unwholesome provisions; common nuisances; the neglect of supervisors in the repair of the public roads; breaches of the laws relative to ordinaries and retailers of spirituous liquors; and, generally, the neglect or omission of any public duty to which the law has annexed a penalty.

Grand Juries ought at all times to keep in mind, that the object of their institution is to promote and protect the welfare of society, not to harrass it with prosecutions of an unimportant or questionable nature.

No person must be summoned and returned as a juror, if under the age of twenty-five years. 1797, *c.* 87, *s.* 5.

At the opening of the court, the clerk calls over the names of the jurors, and those neglecting to appear when summoned, without sufficient excuse, may be fined £.33 by the general court, and £.20 by the county courts. 1782, *c.* 40.

Then the grand jury must be called in order, every man by his name, and addition, as they are returned. When the jury is full, the clerk shall swear them after this manner: The foreman by himself must lay his right hand upon the book, and the clerk shall give him the oath.

Form of the Oath of the Foreman of a Grand Jury.

You, as foreman of this inquest, for the body of —— county, shall diligently enquire and true presentment make, of all such matters and things as shall be given you in charge: The state's counsel, your fellows and your own

you shall keep secret; you shall present no man for hatred, envy or malice, neither shall you leave any man unpresented for love, fear, favor, or affection, or hope of reward; but you shall present things truly, as they come to your knowledge, according to the best of your understanding. So help you God.

The rest of the grand jury, by three at a time, in order, are sworn as follows:

"The same oath which your foreman hath promised to observe and keep on his part, you and every one of you do promise to observe and keep on your parts, So help you God."

When the grand jury are all thus sworn, then the clerk says to the crier, "count these:" And as the clerk names them, the crier is to count them. Which being done, the clerk says, "Grand Jurors, stand together and hear your charge." After which, silence being commanded, the chief judge gives the charge to the jury; when they retire into a room provided for their accommodation.

Form of an Oath to be administered to a person giving Evidence to the Grand Jury.

The evidence which you shall give to the grand inquest for —— county, shall be the truth, the whole truth, and nothing but the truth. So help you God.

A list of licensed ordinary keepers must be delivered to the grand jury by the county clerks. 1780, *c.* 24, *s.* 21.

One assoiate justice in the county court may impannel and charge the grand jury. 1801, *c.* 74, *s.* 4.

He may also order attachments against jurors for non-attendance; may direct any witness to be sworn to the grand jury; and may receive any presentment or indictment from the grand jury. *ibid.*

The grand jury may find an indictment upon the oath of one witness only, unless it be for high treason, which requires two witnesses.

It seems to be generally agreed, that the grand jury may not find part of an indictment to be true, and part false; but must either find a true bill, or *ignoramus* for the whole: and that if they take upon them to find it specially, or conditionally, or to be true for part only, and not for the rest,

the whole is void, and the party cannot be tried upon it, but ought to be tried anew.

Notwithstanding there is the authority of Lord Hale, and other great legal characters, for saying that the grand jury ought only to hear the evidence for the state, yet there are very high law authorities who contend, that a grand jury ought to have the same persuasion of the truth of an indictment as a petty jury, or a coroner's inquest; for they are sworn to present the truth, and nothing but the truth.

The sound opinion appears to be, that the grand jury ought to hear both parties, if present, or conveniently to be heard.

The grand jury ought to strike out of an indictment what they are not certain is true; or may any wise alter it to what they are certain is true: Or if any thing be in it they are doubtful of, they may superscribe it *ignoramus*, at their election in all these cases. Thus if a jury find the words not spoke, or the fact not done with and according to the aggravation and circumstances in an indictment, &c. mentioned, they ought either not find the indictment, or strike out what they have not sufficient evidence of.

In order to give a better view of the matter, it may not be amiss to introduce here the form of an indictment—it is from a copy in a case of forgery.

Form of an Indictment.

——County, To Wit:

The Jurors for the state of Maryland, for the body of —— county, upon their oath present, that A. B. late of —— county, gentleman, on the —— day of ——, in the year of our Lord ——, at the county aforesaid, had in his possession one promissory note, signed under the hand of a certain C. D. bearing date on a day and year to the jurors aforesaid unknown, by which said note the said C. D. did promise to pay sixty days after the said date to the said A. B. or order, —— dollars for value received; and that the said A. B. contriving and intending the said C. D. and E. F. and G. H. feloniously to deceive and defraud, on the said —— day of ——, in the year of our Lord ——, with force and arms at the county aforesaid, wickedly, unlawfully and feloniously did falsely alter and

forge the said promissory note, by changing and altering the original date to the —— day of ——, in the year of our Lord —— ; to the evil example of all others in like cases offending, against the form of the act of Assembly in such case made and provided, and against the peace, government and dignity of the state of Maryland: And the jurors aforesaid upon their oath aforesaid do further present, that the said A. B. contriving and intending the said C. D. and the said E. F. and G. H. feloniously to deceive and defraud, on the —— day of ——, in the year of our Lord ——, with force and arms at the county aforesaid the said promissory note so falsely altered and forged as aforesaid, wickedly, falsely, unlawfully, fraudulently and feloniously did publish and utter to the said E. F. and G. H. for and as a true promissory note, executed by the said C. D. he the said A. B. at the time of publishing and uttering the false and forged promissory note, there by him in form aforesaid, well knowing the said promissory note to have been falsely altered and forged as aforesaid, to the evil example of all others in like cases offending, against the form of the act of Assembly in such case made and provided, and against the peace, government and dignity of the state of Maryland.

—— *Attorney-general of the state of Maryland.*

Witnesses:
Y. Z.
Q. X.

Upon the arraignment of a prisoner, he is placed at the bar, just behind where the lawyers sit, and the clerk calls over the petty jury by name, who take their seats in the box appropriated for the purpose. Then the clerk calls them to be sworn, every man severally, and bids them to *look upon the prisoner:*

Form of the Oath administered to Petit Jurors.

You shall well and truly try, and true deliverance make, between the people of this state and the prisoner at the bar, whom you have in charge, and a true verdict shall give according to your evidence. So help you God.

When all are sworn, the clerk says to the crier, *count these*; and then he calls every one of the jury over by name, and the crier counts them: The clerk then asks them, *If they are all sworn?* If they say *yes*, then he must call to the prisoner, and bid him, *Hold up your hand*; and then say to the jury, *Look upon the prisoner, you that are sworn, and hearken to his cause. You shall understand, that he stands indicted by the name of A. B.* &c. (as in the indictment) *for that he, &c.* (he then reads the indictment.) That done, the clerk says, *Upon this indictment he hath been arraigned, and upon his arraignment he hath pleaded not guilty, and upon his trial he hath put himself upon God and the country, which country you are: So that your charge is to enquire whether he be guilty or not guilty. If you find him guilty, you shall say so, if not guilty, you shall say so, and no more. And hear your evidence.*

The clerk then directs the crier to call the witnesses. That being done, and the witnesses appearing, the clerk bids them lay their right hands upon the book, and gives them the oath.

Form of the Oath to be administered to Witnesses testifying to the Petit Jury.

The evidence that you, and every of you, shall give to this inquest against A. B. the prisoner at the bar shall be the truth, the whole truth, and nothing but the truth. So help you God.

After the jury have heard their evidence, it is customary for the judge to sum the same up to them, in order to give them a more clear and distinct view of the testimony. Then the clerk swears a bailiff, in the following manner:

Form of the Oath to be administered to a Bailiff attending upon a Petit Jury.

You shall well and truly keep every person sworn of this jury together, in some convenient room, without meat, drink, fire, candle, or lodging; and you shall not suffer

any person whatsoever to speak to them, or any of them; neither shall you yourself speak to them, until such time as they be agreed of their verdict, unless it be to ask them if they be agreed of their verdict. So help you God.

Then the bailiff attends the jury to their room, (where they are to consult of their verdict,) and continues at the door till they are all agreed.

When they have agreed on their verdict, they return to the court, and the clerk calls them over by name, and asks them, *Have you all agreed on your verdict?* If they say, *yes*; he asks, *Who shall say for you?* they say, *the foreman.* Then he calls the prisoner to the bar, and bids him hold up his hand. Then he says to the jury, *Look upon the prisoner, what say you, is he guilty, or not guilty?* If they say *guilty*, the clerk says, *Look to him, jailor.* If the jury say, *not guilty*, the prisoner is discharged.

When the clerk has entered their verdict, he says to the jury, *Gentlemen, hearken to your verdict as the court has recorded it.* And then reads it to them thus: *You say that A. B. is guilty of the, &c. whereof he stands indicted. And so you all say.*

On a trial by the jury in the general or county courts twenty persons from the pannel of petit jurors shall be drawn by ballot by the clerk. 1797, *c.* 87 *s.* 9.

Their names shall be written on two lists, one to be delivered to each party, or his counsel. Each party may strike out four, and the remaining twelve shall be sworn, as the jury in the cause. On refusal by the parties, or either of them, the court must strike out eight, and the remaining twelve must be sworn. *ibid.*

Talismen may be summoned where, without them, there would not be twenty. 1798, *c.* 94.

By agreement, the drawing a pannel of twenty may be dispensed with. *ibid.*

No challenge shall be allowed for the want of a freehold in jurors. 1777, *c.* 16, *s.* 2.

Either party may challenge a juror that has a matter of fact depending for trial at the court when the challenger's suit shall be to be tried, which shall be allowed as a good cause of challenge. 1778, *c.* 21, *s.* 3.

No challenge shall be allowed either to the array or polls of a jury returned for the trial of aliens or foreigners, for want of foreigners thereon. 1789, *c.* 22, *s.* 5.

A peremptory challenge of twelve of the jurors impannelled is allowed to either on the trial of a petition

for freedom ; and for want of a sufficient number remaining a *tales*, at the prayer of either party, may be awarded. 1796, c. 67, *s.* 24.

Challenges of jurors are of two sorts ; challenges to the *array*, and challenges to the *polls*. Challenges to the array are at once an exception to the whole pannel, in which the jury are arrayed or set in order by the sheriff in his return ; and they may be made upon account of partiality or some default in the sheriff, or his under officer who arrayed the pannel. Challenges to the polls, are exceptions to particular jurors. They may be challenged for suspicion of bias or partiality. This may be either a *principal* challenge, or *to the favor*. A *principal* challenge is such, where the cause assigned carries with it *prima facie* evident marks of suspicion, either of malice or favor ; as, that a juror is of kin to either party within the ninth degree ; that he has been arbitrator on either side ; that he has an interest in the cause ; that there is an action depending between him and the party ; that he has taken money for his verdict ; that he has formerly been a juror in the same cause ; that he is the party's master, servant, counsellor, steward or attorney, or of the same society or corporation with him : All these are principal causes of challenge, which, if true, cannot be over-ruled. *Blackstone's Commentaries.*

Challenges *to the favor*, are where the party has no principal challenge ; but objects only some probable circumstances of suspicion, as acquaintance, and the like. *ibid.*

Challenges may be made for some crime or misdemeanor, that affects the juror's credit, and renders him infamous. *ibid.*

If by means of challenges or other cause, a sufficient number of unexceptionable jurors doth not appear at the trial, either party may pray a *tales ;* who are liable, however, to the same challenges as the principal jurors. This is usually done till the legal number of twelve is completed. *ibid.*

When the jury have been sworn, and are ready to hear the merits of the case, the pleadings are opened to them by counsel on that side which holds the affirmative of the question in issue. The opening counsel briefly informs them of the parties, the nature of the action, the declaration, the plea, replication, and other proceedings, and lastly, upon what point the issue is joined which is to be determined. The nature of the case, and the evidence in-

tended to be produced, are next laid before them by counsel also on the same side: And, when their evidence is gone through, the advocate on the other side opens the adverse case, and supports it by evidence; and then the party which began is heard by way of reply. *ibid.*

One general rule that runs through all the doctrine of trials is this, that the best evidence the nature of the case will admit of shall always be required, if possible to be had; but if not possible, then the best evidence that can be had shall be allowed. *ibid.*

All witnesses, of whatever religion or country, that have the use of their reason, are to be received and examined, except such as are *infamous*, or such as are interested in the event of the cause. *ibid.*

All others are *competent* witnesses; though the jury from other circumstances will judge of their credibility. *ibid.*

One witness, if credible, is *sufficient* evidence to a jury of any single fact; though undoubtedly the concurrence of two or more corroborates the proof. *ibid.*

If the petit jury eat or drink at all, or have any eatables with them, without consent of the court, and before verdict, it is fineable; and if they do so at his charge for whom they afterwards find, it will set aside the verdict. *ibid.*

If they speak with either of the parties or their agents, after they are gone from the bar; or if they receive any fresh evidence in private; or if to prevent disputes they cast lots for whom they shall find; any of these circumstances will entirely vitiate the verdict. *ibid.*

An effectual verdict is when the jury openly declare that they have found the issue for the plaintiff or defendant; and if for the plaintiff, they assess the damages sustained by the plaintiff, in consequence of the injury upon which the action is brought. *ibid.*

The jury may, if they think proper to take upon themselves, determine, at their own hazard, the complicated question of fact and law; and without either special verdict or special case, may find a verdict absolutely either for the plaintiff or defendant. *ibid.*

When the jury have delivered in their verdict, and it is recorded in court, they are then discharged. *ibid.*

By the assent of the justices of the court jurors may both eat and drink: as if any of the jurors fall sick before they have agreed on their verdict, then by the assent of the justices he may have meat or drink, and also such o-

ther things as are necessary for him and his fellows also, at their own costs, or at the indifferent costs of the parties, if they so agree ; and if they cannot agree, the justices may in such case suffer the jury to have both meat and drink for a time, to see whether they will agree.

After their departure they may desire to hear any of the witnesses again, and it shall be granted, so he deliver his testimony in open court ; and they may desire to propound questions to the court for their satisfaction, and it shall be granted, so it be in open court.

A jury sworn and charged in a capital case, cannot be discharged [without the prisoner's consent] till they have given a verdict.

If a jury say they are agreed, and it being asked who shall say for them, they say their foreman, but upon farther enquiry they are not agreed, they may be fined.

If the case so happen that the jury can in no wise agree, as if one of the jurors knows in his own conscience the thing to be false, which the other jurors affirm to be true, and so he will not agree with them in giving a false verdict, and this appears to the justices by examination, the justices may in such case order in the matter as shall seem to them by their discretion to stand with reason and conscience, by awarding a new inquest or otherwise, as they shall think best by their discretion, like as they may do if one of the jury die before the verdict.

All constables must be sworn up to the grand jury at every court. 1720, *c.* 24, *s.* 21.

In cases of replevin brought for property taken for public taxes, if the jury shall give their verdict for the defendant, they shall find particularly how much is due to him. 1790, *c.* 53, *s.* 4.

Jurymen in the general court are allowed two dollars and fifty cents for each and every day they attend for the discharge of their duty, besides itinerant charges. 1797, *c.* 94, *s.* 1. The jurors must procure each a certificate from the clerk of the court, and present it to the treasurer of the shore on which the court at which they attended is held, who will pay them.

Jurymen attending the county court are allowed one dollar and fifty cents for each and every day they shall attend for the discharge of their duty. *ibid. s.* 4.

Jurymen in the Baltimore county courts are allowed one dollar and thirty three cents per day. *ibid.* s. 9. In the criminal court seventeen cents additional. 1800, *c.* 31, s. 4.

The sheriffs of the different counties in the state, must summon four persons qualified according to law as *petit jurors only* to the general court from each county. 1801, *c.* 74, *s.* 40.

JUSTICES OF THE PEACE.

All justices of the peace in Maryland are appointed annually by the governor and council. *Constitution, art.* 48.

The important powers of a justice of the peace are too numerous to be collected and arranged within this head, unless it were designed to give under it a full view of the administration of justice. There is scarcely any criminal matter of which they, in the first instance, are not obliged to take cognizance; and in civil cases their jurisdiction extends to the value of ten pounds. The various subjects treated of in this book embrace, in a great measure, the duties and business of justices of the peace; under this title, therefore, such matters only will be introduced as have been omitted elsewhere.

Any one justice may adjudge persons taken up and brought before him to be run-aways, and may secure them. 1715, *c.* 44, *s.* 6, 9, 20.

May bind over persons dealing with servants and not being able to pay the fine. *ibid. s.* 13.

May order the correction of servants brought before him by their masters. *ibid. s.* 21.

May order any negro to be whipped for carrying a gun from his master's land without license, and may order a forfeiture of the gun to the person seizing it, &c. *ibid. s.* 32.

May give judgement for the fine for hunting in enclosed ground. 1723, *c.* 7, *s.* 7.

May take an account of the marks of horses, &c. brought before him, which the person aggrieved shall set up in public places. 1715, *c.* 31, *s.* 4.

May take proof, by one witness, of the property of such stray horses, to be delivered to the owner. *ibid.*

May punish slaves guilty of pilfering or stealing, &c. by whipping. 1717, c. 13, *s.* 6.

May give judgement for the fine on persons refusing to go with the constable to suppress the tumultuous meetings of negroes, or refusing when there to assist such constable. 1723, *c.* 15, *s.* 3.

May give judgement for the fine on persons encouraging negroes or other slaves to meet in companies on their plantations. *ibid. s. 5.*

May give judgement for the fine incurred by persons working, or suffering work, or permitting their children to fish, hunt, &c. on Sundays. 1723, *c.* 16, *s.* 10.

One justice may take the acknowledgement of sales, gifts, or mortgages of goods and chattels, in his county. 1729, *c.* 8, *s.* 5.

May issue a warrant against servants or slaves entertaining servants or slaves unlawfully absenting themselves, and punish them by whipping. 1748, *c.* 19, *s.* 4.

May appoint persons to value slaves killed for refusing to surrender, and certify such value to the treasurers. 1751, *c.* 14, *s.* 9.

May give judgement for the fine on persons taking up boats, and not complying with the directions of the act of Assembly relative thereto. 1753, *c.* 10, *s.* 3.

Shall deliver to the person giving notice of boats driven from their moorings, &c. advertisements describing the same. *ibid. s.* 2.

May take the acknowledgenents of gifts of negroes or other slaves. 1763, *c.* 13, *s.* 2.

May, on complaint, commit disorderly persons to the work-house for three months, unless security for good behavior is given. 1768, *c.* 29, *s.* 16.

May, on complaint of the trustees of the poor, order any person in the work-house to be whipped. *ibid.*

May apprehend any negroes, vagabonds, beggars, and other idle and dissolute persons, found loitering, who follow no trade, &c. and have no visible means of subsistence, and commit them to the work-house, to be kept at hard labor. *ibid. s.* 17.

May, by warrant under hand and seal, remove and convey any poor person to the county where he was last legally settled, either as a native, householder, apprentice, or servant, unless security is given for good behavior and discharge of the county. *ibid. s.* 18.

May give judgement for fines by act of Assembly not exceeding £5, and may thereupon commit the offender till payment to the sheriff, or by warrant to any constable direct the same to be levied, with costs, on his goods or chattels. 1777, *c.* 6.

Must annually return to the treasurers of the state lists of such fines. *ibid.*

May, on the application of a sheriff, and his complying with the directions of the act of assembly of 1779, *c.* 25, where a debtor is about to abscond, give a warrant under hand and seal, empowering him to execute for fees such debtor or his effects, and shall return the oath on which it shall be founded to the next county court. 1779, *c.* 25, *s.* 13.

May, if an account above the rates has been paid to an ordinary keeper, compel him in a summary way to restore the whole sum paid. 1780, *c.* 24, *s.* 4.

May issue a warrant to arrest any person pardoned on condition of leaving the state, who returns contrary thereto, and may commit him. 1787, *c.* 17, *s.* 4.

May on complaint, issue a warrant against persons setting up booths contrary to the act for the suppression of fairs, and commit them to jail till such booths are removed, and the fine paid. 1790, *c.* 15, *s.* 3.

May, on application by a person whose property has been taken for taxes, give a warrant to the county clerk to issue a writ of replevin for such property, on the proofs and in the manner prescribed by law. *ibid. c.* 53, *s.* 2, 3, 9.

May punish slaves convicted of whipping or beating the water in Patuxent river with poles or sticks to drive the fish, between the first of February and the first of June, by whipping not exceeding ten lashes, unless acting by order of their masters, who may then be fined, or unless the masters will redeem such slaves, by payment of twenty dollars, half to the informer, and half to such justice for the use of the county. 1796, *c.* 32, *s.* 3, 4.

Must account to the levy court for all money received by virtue of the act of 1796, *c.* 32. *ibid.*

May give judgement for fines arising under the ordinances of the city of Baltimore, if not exceeding twenty dollars. *ibid. c.* 68, *s.* 9.

Two justices may discharge persons taken up as runaways from imprisonment, on their proving that they are not servants. 1715, *c.* 44, *s.* 34.

May, in the recess of the court, on complaint or their own observation of misbehavior, &c. suspend an inn keeper till the next court. 1780, *c.* 24, *s.* 7.

May grant license to keep ferry on the death of a ferry keeper, between the courts. 1781, *c.* 22, *s.* 4.

May grant license to keep ferry, (at any place used as

such) till the meeting of the court, taking recognizance. 1782, c. 31.

May take the confession of a judgement as a supersedeas to stay execution on a judgement in a court of law, or before a justice of the peace. 1791, c. 67, s. 1, 2, 3.

A justice of the peace may be eligible as a senator, delegate, or member of the council, and continue to act as a justice of the peace. *Constitution, art.* 44.

Every associate justice of a county court has, within his county, all the powers and jurisdiction of a justice of the peace, out of court, except as to small debts. 1801, c. 74, s. 16.

The chief justice of a county court has the same powers in his district. *ibid.*

List of fees to which Justices of the Peace are entitled, for the following services.

For issuing a warrant for debt, twelve and an half cents.

For each summons, including all the witnesses applied for at the same time, twelve and an half cents.

Venire to summon freeholders, twenty cents.

Capias ad satisfaciendum, twelve and an half cents.

Fieri facias, twelve and an half cents.

Scire facias, twelve and an half cents.

Recognizance for defendant's appearance, twelve and an half cents.

Every *Supersedeas*, each justice twelve and an half cents.

Every Oath or affidavit, six cents.

Probat of account, six cents.

Every judgement rendered, twelve and an half cents.

Commitment, twelve and an half cents.

Releasement, twelve and an half cents.

Warrant of attachment, twenty-five cents.

Attendance on valuation of orphans' estates, per day two dollars.

Return thereon, seventy-five cents.

Venire to summon a jury in a forcible entry and detainer, seventy-five cents.

Taking inquisition and return thereon, four dollars.

Warrant of restitution, seventy-five cents.

Taking acknowledgement of any deed, each justice twenty-five cents, including all the persons acknowledging at the same time.

Taking any other acknowledgement, twelve and an half cents.

Taking appeal bond, twenty-five cents.

Taking a bail-piece to the general or county courts, twenty-five cents.

A pass, twenty-five cents.

Certificates of strays, thirty-seven and an half cents.

Taking inspectors' bonds, each justice twenty-five cents.

Probat of county clerk's bond, each justice twenty-five cents.

[*These fees to be paid by the party against whom judgement is rendered.*]

It is the duty of every justice of the peace to write and prepare all probats, affidavits, supersedeas, and other instruments to be executed by them in virtue of law, when required, except in cases of acknowledgement of deeds. 1801, *c.* 74, *s.* 31.

The following Oaths and Declaration are rendered necessary by the constitution and laws of this state to be taken and made by Justices of the peace, previously to their acting as such.

No. 1. Oath of a Justice of the Peace, prescribed by act of Assembly, 1777, *c.* 5.

I, A. B. justice, do solemnly promise and swear, that as a justice of the peace, I will do equal right and justice according to the law of this state, in every case in which I shall act as justice, freely without sale, fully without any denial, and speedily without delay, and will behave myself justly, honestly and faithfully, in the said office, according to the best of my knowledge and understanding. So help me God.

No. 2. Additional Oath, prescribed by act of Assembly, 1777, *c.* 5.

I, A. B. do solemnly promise and swear, that I will

well and truly behave and demean myself in the office of a justice of the peace, in all things appertaining to the duties thereof, according to the best of my skill and judgement, and without favor, affection or partiality. So help me God.

No. 3. Additional Oath, prescribed by the Constitution, *art.* 55.

I, A. B. do swear, that I do not hold myself bound in allegiance to the king of Great-Britain, and that I will be faithful and bear true allegiance to the state of Maryland. So help me God.

No. 4. Additional Oath, prescribed by act of Assembly, 1801, *c.* 74.

I, A. B. do swear that I will not directly or indirectly receive any greater fee or reward for any thing in my office as justice of the peace than what is allowed by the act entitled "an act relative to the administration of justice in this state, and to repeal the acts of Assembly therein mentioned."

[An additional oath had been prescribed by act of Assembly, 1777, *c.* 20, entitled "An act to punish certain crimes and misdemeanors, and to prevent the growth of toryism;" but by an act of 1789, *c.* 11, all those parts of the act of 1777, *c.* 20, which directed that senators, delegates, councillors, electors of the senate, attornies and all civil officers, should take the oath prescribed, were repealed.]

No. 5. Additional Oath, prescribed by act of Congress, 1786, 29th June.

I, A. B. do solemnly swear *(or affirm)* that I will sup-

port the constitution of the United States. So help me God.

No. 6. Form of a Declaration of Belief in the Christian Religion, prescribed by the Constitution, *art.* 55.

I, A. B. do most solemnly and sincerely declare, that I believe in the Christian Religion.

Justices of the peace are not exempted from serving as jurors. 1797, *c.* 87, *s.* 6.

They may give judgement for the fine for entertaining servants or slaves unlawfully absenting themselves, if not exceeding 600lbs. of tobacco. 1748, *c.* 19, *s.* 2.

As much of the business of a justice of the peace consists in the execution of divers acts of Assembly, which cannot be abridged without coming short of the body and substance of them, it will be safest for the justices to have an eye to the acts of Assembly at large, and thereby to take their further and better directions, for their whole proceedings; for, as lord Coke observes, abridgements are of good and necessary use to serve as tables, but not to ground any opinion, much less to proceed judicially upon them.

A justice of the peace is strongly protected by the law in the just execution of his office. He is not to be slandered, abused, assaulted, or beaten; for in any of these cases the punishment is extremely severe against the offenders. He is not punishable at the suit of the party, but only at the suit of the state, for what he doth as judge in matters which he has power by law to hear and determine without the concurrence of any other.

If any action is brought against a justice for any thing done by virtue of his office, he may plead the general issue, and give the special matter in evidence; if he recovers, he will have double or treble costs.

Regularly, justices of the peace ought not to execute their office in their own case; but cause the offenders to be convened or carried before some other justice, or desire the aid of some other justice, being present.

And yet if the justice shall deal in his own case, it seems in some cases justifiable; as when a justice shall be assaulted, or (in the doing his office especially) shall be abused to his face, and no other justice present with him; then

it seems he may commit such offender until he shall find sureties for the peace or good behavior, as the case shall require: But if any other justice be present, it were fitting to desire his aid.

And as it is unjust in many cases, for the magistrate to act in his own cause, so it is also imprudent; for men are generally more foolish in their own concerns, than in those of other people.

If a justice exceed his authority in granting a warrant, yet the officer must execute it and is indemnified for so doing; but if it be in a case where he hath no jurisdiction, or in a matter whereof he has no cognizance, the officer ought not to execute such warrrant; so that the officer is bound to take notice of the authority and jurisdiction of the justice.

It seems that a justice of the peace may do a *ministerial* act out of his county, such as examining a party robbed, whether he knows the felons; but that he cannot do a *compulsory* act, as committing a person for not giving recognizance.

LEASE.

A *lease* is properly a conveyance of lands or tenements (usually in consideration of rent or other annual recompense) made for life, for years, or at will, but always for a *less* time than the lessor hath in the premises; if it be for the *whole* interest, it is more properly an assignment than a lease.

Form of a Lease for Ninety-Nine Years.

This indenture, made this —— day of ——, in the year of our Lord ——, between A. B. of —— county and state of Maryland, ——, of the one part, and C. D. of —— county and state aforesaid, ——, of the other part, witnesseth, that the said A. B. for and in consideration of the payment of the rent and performance of the covenants hereinafter mentioned on the part of the said C. D. his executors, administrators and assigns, to be paid and performed, hath demised, granted, and to farm letten, and by these presents doth demise, grant and to farm let unto the said C. D. all that lot, piece or parcel of ground, situ-

ate and being in the *town of Frederick*, and described on the plat of said *town* by number ——, and beginning for the said lot at, &c. &c. together with the said streets, lanes, and alleys, and all other advantages to the said lot, piece or parcel of ground belonging, or in any wise appertaining; to have and to hold the said lot, piece or parcel of ground and premises with the appurtenances, unto the said C. D. his executors, administrators and assigns, from the day next before the day of the date of these presents for and during and until the full end and term of ninety-nine years from thence next ensuing, fully to be complete and ended, yielding and paying therefor, yearly and every year during the said term, to the said A. B. his heirs and assigns, the yearly rent of —— current money, clear of all deductions, for taxes, assessments, rates, and all other public dues, impositions, burthens or charges, of every kind or nature whatsoever, civil or military, which may at any time hereafter be laid, levied, taxed, imposed or assessed on the said lot, piece or parcel of ground and premises, or any part thereof, or on any building or buildings, erected thereon, either by act of congress, or act of the legislature of this state, or by any town, city or corporation act, or in any other manner whatsoever, in two half-yearly equal payments in each and every year during the continuance of this present demise; provided always, and on this condition, that if it shall happen that the said yearly rent (without any deduction or discount of any kind as aforesaid) shall be in arrear and unpaid in all or in part by the space of —— days next after any of the days of payment thereof before mentioned, that then it shall and may be lawful to and for the said A. B. his heirs and assigns, and any of them, into the demised premises, or any part thereof, in the name of the whole, to re-enter, and the same to have again, repossess, occupy and enjoy, as in his former estate, and the said C. D. his executors, administrators and assigns, and all others occupiers and possessors of the said demised premises, or any part thereof, thereout, and from thence utterly to expel, put out and remove, until all such arrearages of rent, with legal interest therefor, and all and every cost, charge and expence incurred by the said A. B. his heirs or assigns, by reason of the non-payment of the said rent, shall be fully satisfied and paid, or to make distress therefor, at the option of the said A. B. his heirs or assigns; and al-

so on this further proviso and condition, that if the said yearly rent, without any discount or deduction of any kind, as aforesaid, shall be in arrear and unpaid by the space of one year next after any of the days of payment thereof before mentioned, although no demand thereof should be made, that then it shall and may be lawful to and for the said A. B. his heirs and assigns, into the demised premises, or any part thereof, in the name of the whole, to re-enter, and the same to have again, repossess, occupy and enjoy, as in his former estate, and the said C. D. his executors, administrators, and assigns, and all other occupiers and possessors of, the said demised premises, or any part thereof, thereout and from thence utterly to expel, put out and remove, that then in such case this deed, and every clause, matter and thing therein contained, shall from thenceforth be utterly void and of none effect, in law and equity to every intent and purpose whatsoever; and the said C. D. for himself, his executors, administrators and assigns, doth hereby covenant and grant to and with the said A. B. his heirs and assigns in manner and form following; that is to say, that he the said C. D. his executors, administrators, or assigns, shall, within the term of three years from the date hereof, erect and build good and substantial improvements of brick or stone on the said demised premises, of the yearly value of the ground-rent reserved as aforesaid, and if the said improvements shall not be erected and built within the said term, that then the said C. D. his executors, administrators and assigns, will pay to the said A. B. his heirs and assigns, the annual sum of one hundred dollars, exclusive of, and in addition to, the rent reserved as aforesaid, which said additional sum shall be regulary and duly paid every year until the said improvements shall be erected and built, but then to cease, and not before; and also that the said C. D. his executors, administrators or assigns, will well and truly pay to the said A. B. his heirs or assigns, during the said term hereby demised, the yearly rent above reserved, without any deduction or discount of any kind whatsoever as aforesaid, at the days and time above limited for the payment of the same, according to the purport and true intent and meaning of these presents; and further, that the said C. D. his executors, administrators and assigns, shall and will, at all times hereafter, during the said term hereby demised, bear, pay and discharge, all

taxes, assessments, rates, and all other public dues, impositions, burthens or charges of every kind or nature whatsoever, civil or military, which shall or may at any time hereafter be taxed, assessed, levied, or imposed, on the said piece or parcel of ground and premises above demised, or any part thereof, or on any building or buildings erected thereon, either by act of congress, or act of the legislature of this state, or by any town, city, or corporation act, or in any other manner whatsoever; provided always, that the said lessee, his executors, administrators or assigns, may retain from the said annual rent seven dollars, as the proportion of the assessment or tax on the interest of the lessor in the premises; and the said A. B. for himself, his heirs and assigns, doth covenant and grant to and with the said C. D. his executors, administrators and assigns, that he and they respectively, on the payment of the rent, and performanceof the covenants herein before mentioned and reserved, on his and their part respectively, to be paid and performed, shall and may peaceably and quietly have, hold, use, occupy, possess and enjoy, the above demised premises, with their appurtenances, for and during the aforesaid term of ninety-nine years, without any let, trouble or interruption of him the said A. B. his heirs or assigns, or any other person claiming under him or them; and also that the said A. B. his heirs and assigns at any time or times hereafter during the continuance of this present demise, on the request, and at the cost and charge of the said C. D. his executors, administrators or assigns, and on his or their payment or tendering in payment to the said A. B. his heirs or assigns, the sum of —— current money as aforesaid, shall and will make and execute, or cause to be made and executed, a new lease of the above demised premises for other ninety-nine years, to commence and take effect from and at the end of the term for which the same is above demised, subject to the same rent, and under the like covenants as are herein before mentioned, so that this present demise may be renewable and renewed forever.

In witness whereof, &c.

On notice in writing given, and refusal by tenants for years or at will to remove, the lessor, or his heirs, &c. within one month from the time of giving such notice, and upon the end and determination of the lease or estate,

may apply to any two justices of the peace for the county wherein the land is situate, and upon due proof of the whole matter made before them touching the previous possession of the lessor and of the lease and the expiration of the term of the same, as well as of the written notice given to the tenant and of his refusal to remove, then the said justices may issue a warrant under their hands and seals, directed to the sheriff of the county, commanding him to summon twelve good and lawful men of his county (together with the tenant in possession) to appear on the premises before the justices on the fourth day after issuing the said warrant. 1793, *c.* 43.

Form of a Warrant to Summon twelve men, as a Jury, in a case where a Tenant holds over.

—— County, To Wit:

We A. B. and C. D. two justices of the peace of the state of Maryland, in and for the county aforesaid, to the sheriff of said county, greeting: Whereas complaint and due proof were (*this day*) made before us, that E. F. of the same county, (*farmer*) was quietly and peaceably possessed of [*here describe the premises*] situate ——, and being so thereof possessed, on the —— day of ——, did demise the said premises to one G. H. for the term of —— years, thence next ensuing, under the yearly rent of ——, payable, &c. and that the said G. H. by virtue of the said demise, entered into possession of said premises and held them during said term, and from the expiration thereof continued to hold the same by consent of said E. F. from year to year at the yearly rent aforesaid, until the —— day of —— last; that the said E. F. being desirous to have again and repossess said premises, that with that view he had given notice in writing to the said G. H. to remove and quit the same, the time being expired for which the premises had been let, and one month or more having elapsed since the service of said notice, and that the said G. H. hath hitherto refused, and still doth refuse to comply therewith. Therefore, we command you to summon twelve good and lawful men of said county to be and appear on the premises before us on the —— day of —— (*instant,*) at two of the clock in the afternoon of the same day, (*the 4th day after issuing it*)

to inquire upon their oaths of and concerning the premises; and that you also summon the said G. H. so that he be and appear before us and said jury at the day and place last aforesaid, to shew cause (if any he can) why restitution of said premises should not be forthwith made to the said E. F. and have you then and there the names of the jurors and this writ. Given under our hands and seals, this —— day of ——, in the year of our Lord ——.

A. B. Seal.
C. D. Seal.

Form of the Sheriff's Return on the foregoing.

To the justices within named, I do hereby certify, that I have summoned twelve good and lawful men of the within named county, and have also summoned the within named G. H. to be and appear at the day and place within mentioned, as within I am commanded. So answers

G. C. Sheriff.

Form of the Oath of the Foreman of the Jury.

You do swear *(or solemnly, sincerely and truly declare and affirm)* that, as foreman of this inquest, you will deligently enquire and true presentment make, of all such matters and things as shall come before you, concerning a forcible detainer, said to have been lately committed in the *(dwelling-house, &c.)* of E. F. at, &c. —— *(farmer,)* you shall spare no one for favor or affection, nor grieve any one for hatred or ill will, but proceed herein according to the best of your knowledge, and according to the evidence: So help you God.

Form of the Oath of the Jurors.

You and each of you, do swear, *(or solemnly, sincerely and truly declare and affirm)* that the same that your foreman hath sworn to observe and keep on his part, you, and

each of you, will severally observe and keep, on your parts. So help you God.

Form of the Inquisition.

—— County, To Wit:

An inquisition, indented and taken at ——, in the county aforesaid, on the —— day of ——, before A. B. and C. D. esquires, two justices of the peace of the state of Maryland in and for the county aforesaid, by the oath of I. K. &c. and the solemn affirmation of L. M. &c. *(naming the jurors)* who upon their oaths and affirmations aforesaid, do say, that E. F. was heretofore, to wit, in the year ——, possessed of the premises whereon G. H. now resides, that he let the same to the said G. H. for a term which is expired, that he has given notice in writing to the said G. H. more than thirty days before his application to the justices aforesaid to quit the premises, which he refused to do, and still refuses to deliver possession thereof: We whose names are hereunto subscribed, being the jurors aforesaid, do upon the evidences now produced before us, find the inquisition aforesaid true.

(Signed by the Jurors.)

If, upon hearing the parties, (or the tenant in possession after being summoned shall neglect to appear) the jury shall, from the evidence, find upon their oath that the lessor had been in possession, that he had leased it, and the lease had expired and the tenant been notified in writing to remove and had refused, the justices shall award restitution, and issue a warrant under their hands and seals, directed to the sheriff, commanding him to deliver forthwith the possession to the lessor, his executors, administrators or assigns. 1793, *c.* 43.

Form of a Warrant to make Restitution.

—— County, To Wit:

We A. B. and C. D. two justices of the peace of the state of Maryland, in and for the county aforesaid, to the sheriff of —— county, greeting. Whereas by an inquisition taken before us this —— day of ——, at the county aforesaid, on the premises whereon G. H. now resides,

upon the oath of I. K. &c. and the solemn affirmation of L. M. &c. (*names of the jurors*) it is found that E. F. being possessed of the said premises in the year ——, let the same to the aforesaid G. H. for a term which is past, and that he the said E. F. has given notice in writing to the said G. H. since the expiration of the said term, to quit the premises, more than thirty days before the complaint was made to us as aforesaid, and that he refused to quit the same, as by the inquisition aforesaid more fully appears. You are therefore hereby directed and commanded forthwith to deliver to the said E. F. possession of said premises, as he was heretofore possessed, and in as full and ample a manner, pursuant to the act of Assembly in such case made and provided ; and this shall be your authority. Given under our hands and seals, on the premises, at ——, on this —— day of ——, in the year of our Lord ——.

A. B. Seal.
C. D. Seal.

Justices are authorised to give judgement for costs against tenants holding over, and to issue execution thereupon, if required by the lessor, his heirs or assigns. 1793, c. 43.

But if the tenant shall alledge that some other person has a claim to the property, and that other person shall appear before the justices upon summons or otherwise (which summons must be issued immediately, and made returnable in six days following) and make oath that he verily believes he is entitled to the property, and shall, with two sufficient sureties, enter into bond to the lessor, his heirs or assigns, in such sum as the justices shall think proper, not less than three hundred pounds, to prosecute his claim at the next county court which shall be held in and for said county thereafter, the justices shall forbear to award restitution of the possession, and cease to give judgement for the costs. Yet if the said claim shall not be prosecuted as aforesaid, the justices shall proceed to award restitution, and give judgement and issue execution for the costs as aforesaid, within ten days after the end of said court. *ibid.*

LETTER OF ATTORNEY.

Form of a General Letter of Attorney.

Know all men by these presents, that I, A. B. of ——, for divers good causes and considerations me hereunto moving, have made, ordained, authorised, nominated, constituted and appointed, and by these presents do make, ordain, authorise, nominate, constitute and appoint, C. D. of ——, my true and lawful attorney, for me and in my name, and for my own proper use and benefit, to ask, demand, sue for, recover and receive of and from E. F. of ——, all such sum or sums of money, debts and demands whatsoever, which are now due and owing unto me, the said A. B. by and from the said E. F. and to have, use and take, all lawful ways and means in my name, or otherwise, for the recovery thereof, by attachment, arrest, distress or otherwise, and to compound and agree for the same, and acquittances, or other sufficient discharges for the same, for me and in my name to make, seal and deliver, and to do all other lawful acts and things whatsoever concerning the premises, as fully, and in every respect, as I myself might or could do were I personally present at the doing thereof, and attornies, one or more under him for the purposes aforesaid to make, and again at his pleasure to revoke, ratifying and confirming, and by these presents allowing, whatsoever my said attorney shall in my name lawfully do, or cause to be done in and about the premises, by virtue of these presents.

In witness whereof, &c.

Form of a Letter of Attorney to Sell or Let Lands.

Know all men by these presents, that whereas I, A. B. of ——, am seized in fee of and in all that, &c. situate and now *(or late)* in the possession or occupation of, &c. Now know ye that I, the said A. B. have made, constituted and appointed, and by these presents do make, constitute and appoint C. D. of ——, my true and lawful attorney, for me and in my name to lease, let, sell or demise,

the said ——, to such person or persons, and for such a term or number of years, and at and under such yearly and other rents, as he shall think fit, or otherwise to sell and dispose thereof, either for life or lives, or to sell, grant and convey the same absolutely, in fee-simple, for such price or sum of money, and to such person or persons, as he shall think fit and convenient; and also for me, and in my name, to seal, execute and deliver, such deeds, conveyances, bargains and sales, for the absolute sale and disposal thereof or of any part thereof, with such clauses, covenants and agreements, to be therein contained, as my said attorney shall think fit and expedient, hereby ratifying, confirming and allowing, all such lease or leases, deeds, conveyances, bargains or sales, which shall at any time hereafter be sealed and executed by my said attorney touching or concerning the premises.

In witness whereof, &c.

Form of a Revocation of a Letter of Attorney.

Know all men by these presents, that whereas I, A. B. of ——, in and by my letter of attorney, bearing date, &c. did make, constitute and appoint, C. D. of ——, my lawful attorney for recovery of all debts and sums of money whatsoever due to me, the said A. B. from E. F. of ——, as by the said letter of attorney may appear. Now know ye, that I the said A. B. for that the said C. D. hath abused the authority by me in him reposed (*or, for divers good causes and considerations me hereunto moving*) have revoked, countermanded, annulled and made void, and by these presents do revoke, countermand, annul and make void, the said letter of attorney, and all power and authority thereby given, or intended to be given, to the said C. D.

In witness whereof, &c.

LETTERS.

Persons breaking open the seals of any private letters not directed to them, or without special license from the person to whom they are directed so to do, are liable to

imprisonment for six days, and subject to a fine of five pounds sterling. 1713, *c.* 2, *s.* 8.

For breaking open public letters, persons are liable to two months imprisonment, and a fine of twenty pounds sterling. *ibid. s.* 9.

By 1790, *c.* 51, the fine in both cases is made one hundred pounds.

LEVY COURT.

The justices of the Levy Court consist of seven for each county, except Baltimore county, which has eleven, four from the city and seven from the county: They are appointed and commissioned annually by the governor and council of the state, (*from the list of those annually commissioned as justices of the peace.**) In case of a vacancy by death, removal, or otherwise, the governor and council are authorised, from time to time to fill it up. 1798, *c.* 34, *s.* 1, 2. They receive for their services two dollars each for every day they attend to the duties of the office. *ibid. s.* 5.

The levy court in each county in Maryland has the power of appointing constables, supervisors of the roads, judges of election, and a person or persons to collect the public levy, which they have likewise the power of laying.

The collector before he acts, is obliged to give bond, payable to the state, with good and sufficient securities, in double the sum to be collected, to be approved by the justices.

Form of the Collector's Bond.

Know all men, &c. (*as usual.*)

The condition of the above obligation is such, that if the above bound ——— ———, shall well and faithfully execute his office, and the several duties required of him by law, and shall well and truly account for and pay to the justices of the levy court or their order, the several sums of money which he shall receive or be answerable for by

* *This exclusion of all others but justices of the peace, was repealed by* 1802, *c.* 81, *s.* 3.

law, at such time as the law shall direct, then the above obligation to be void; otherwise to be and remain in full force and virtue in law.

It is the duty of the county clerk to deliver to the collector a copy of the assessment, and he must proceed to the collection thereof within twenty days, and must account for and pay the money to the orders of the court within six months from the receipt of the assessment. 1794, *c.* 53, *s.* 2.

Every person appointed collector must, before he acts as such, subscribe a declaration of his belief in the Christian religion, and take and subscribe the oath (or affirmation, if a Quaker, Menonist, or Tunker) of fidelity to the state, and the oath to the United States. *ibid.* [*For these forms see Justices of the Peace.*] If the collector refuses or neglects to make payment, his bond may be put in suit.

Collectors refusing or neglecting to pay money to persons properly authorised to receive it, may be proceeded against in a summary way, on application to court, after twenty days notice is given in writing to them of the party's intention to apply. 1797, *c.* 43, *s.* 1.

In cases of money withheld from the poor, collectors are only to receive ten days notice. 1794, *c.* 53, *s.* 3.

Collectors are entitled (on the sale of any goods or chattels to enforce payment,) to the same fees as are established by law on the service of executions. *ibid. s.* 7.

But before any *personal* property can be seized, distrained, or sold, by any collector of the county assessment to enforce the payment thereof, the collector must deliver to the person from whom the same is demanded, or leave at his or her last place of abode, a particular account of the species and amount of property with which such person is assessed, the rate of tax imposed thereon, and the amount of such tax. 1800, *c.* 85.

In case a collector dies before the expiration of the time limitted by law for the collection of the levy, the justices of the levy court of his county, shall meet as soon thereafter as possible, and appoint another collector from among the securities of the one deceased. 1803, *c.* 92, *s.* 47.

By the act for the valuation of real and personal property, 1803, *c.* 92. *s.* 33, a collector or deputy-collector is obliged to take the following oath:

Form of an Oath for Collector, &c. prescribed by act of Assembly, 1803, c. 92.

I, A. B. do swear *(or affirm)* that I will well and truly execute the duties imposed on me by an act, entitled, "An act for the valuation of real and personal property within this state," and will justly and impartially value all personal property which I shall be authorised to value, agreeably to the directions of the act for the valuation of real and personal property within this state, according to the best of my skill and knowledge, and therein I will spare no person for favor or affection, or any person grieve for hatred, malice, or ill will.

LICENSE.

No person can lawfully sell or barter any wine, rum brandy, whiskey, or other distilled spirituous liquors, strong beer or cider, at any horse-race, without obtaining a license, under the penalty of twenty pounds for every offence. Any person desirous to obtain such license, must apply to a justice of the peace, and if he approves of the person he may direct the clerk of the county to grant him license. 1784, *c.* 7, *s.* 15; *c.* 37, *s.* 32.

Form of a Direction from a Justice of the Peace to grant License to sell Liquors at a Horse-Race.

—— County, To Wit:

Whereas A. B. is desirous to obtain a license to sell spirituous and other liquors, at a horse-race, near —— town, [*or any other place to be particularized*;] this is to certify that I do approve of him for that purpose; and you are hereby directed to grant him a license to sell such liquors, and therein specify the horse-race and the continuance thereof, in conformity with the act of Assembly in such case made and provided. Given under hand and seal

of me, a justice of the peace in and for said county, on this —— day of ——, ——.

J. S. Seal.

To the Clerk of ——— County.

LIBELS.

In case any person or persons shall be prosecuted, by indictment or any other criminal prosecution, for a libel, the party so prosecuted shall be entitled to give the truth of the matter charged in the said indictment, or other prosecution, in evidence, under the general issue, by way of justification, any law, usage or custom, to the contrary notwithstanding. 1803, *c.* 54.

MANUMISSION.

Slaves not exceeding forty-five years of age, and who are of sound body and mind, and are capable of labor sufficient to maintain themselves, may be manumitted by last will and testament, provided the same is no prejudice to creditors. 1796, *c.* 67, *s.* 13.

Persons possessed of slaves of the same age, &c. may manumit them by writing under hand and seal, evidenced by two good and sufficient witnesses at least. *ibid. s.* 29.

Form of a Deed of Manumission.

To all whom it may concern, be it known, that I, A. B. of —— county, in the state of Maryland, for divers good causes and considerations me thereunto moving, as also in further consideration of —— current money, to me in hand paid, have released from slavery, liberated, manumitted and set free, and by these presents do hereby release from slavery, liberate, manumit and set free, my negro man named —— ——, being of the age of —— years, and able to work and gain a sufficient livelihood and maintenance, and him the said negro man, named ——, I do

declare to be henceforth free, manumitted and discharged, from all manner of servitude or service to me, my executors or administrators, forever.

In testimony whereof I have hereunto set my hand, and affixed my seal, this —— day of ——, in the year of our Lord ——.

A. B. Seal.

Signed, sealed and delivered, in the presence of
C. D.
E. F.

Received, on the day of the date within mentioned, the sum of —— current money, it being the full consideration money, within mentioned. A. B. Seal.

[The foregoing deed must be acknowledged before a justice of the peace of the county where the master resides, and the justice must endorse on the back thereof the time of the acknowledgement and the party making the same, and it must be recorded within the records of that county within six months after the date of manumission. 1796, c. 67, s. 29.]

Form of the Acknowledgement.

—— County, To Wit:

On this —— day of ——, personally appears A. B. party to the within instrument of writing, before me the subscriber, a justice of the peace of the state of Maryland for the said county, and acknowledges the same to be his act and deed for the purposes within mentioned, and the negro man within named to be henceforth manumitted and discharged from all services to him, or to any claiming under him, and to be free and manumitted, according to the act of Assembly in such cases made and provided.

Acknowleged before J. S.

LOTTERIES.

No person or corporation in the state shall, without the permission of the legislature, propose to the public any scheme of a Lottery to be drawn within the state, or for the disposal of property therein, under the penalty of five hun-

dred pounds. 1792, *c.* 58, *s.* 1. The penalty to be recovered by indictment in the county court.

Persons selling, or offering for sale within the state, tickets in any lottery not authorised by the legislature or by congress, shall forfeit for every ticket ten pounds, to be recovered in the same manner. *ibid. s.* 2.

MARRIAGES.

No persons within the state of Maryland can be lawfully married without first obtaining a license from the clerk of the county in which they may reside or wish to be married; unless their names shall be published thrice in some house of public worship, in the county where the woman shall have her usual residence, on three several Sundays, by some minister residing in the same county where the woman to be married usually lives; * under the penalty of £500 current money: And the minister marrying the parties without such licence or publication, forfeits likewise £500, whether he performs the ceremony in or out of the county, or in or out of the state. 1777, *c.* 12; 1797, *c.* 38.

All marriage licenses in this state must be printed, and countersigned by the treasurers of the state, from whom the county clerks are to procure them. 1797, *c.* 38, *s.* 1, 2, 3.

Form of a Marriage License.

Whereas application hath been made to me by A. B. of —— county, and C. D. of —— county, for license to be joined in holy matrimony: These are therefore to authorise and license you to solemnize the rites of marriage between the said persons, according to law, there appearing to you no lawful cause or just impediment, by reason of any consanguinity or affinity, to hinder the same. Given under my hand and the seal of my office this —— day of ——, in the year ——. To the reverend Mr. ——,

* *If a Quaker, the publication may be made in the manner usual among that society.*

or any other person qualified by law to celebrate the marriage in the state of Maryland.

W. R.

A Table of the degrees of kindred and affinity within which no person related shall marry together.

A man shall not marry his	A woman shall not marry her
Wife's daughter,	Husband's son,
Son's wife,	Daughter's husband,
Sister,	Brother,
Son's daughter,	Son's son,
Daughter's daughter,	Daughter's son,
Son's son's wife,	Son's daughter's husband,
Daughter's son's wife,	Daughter's daughter's husband,
Wife's son's daughter,	Husband's son's son,
Wife's daughter's daughter,	Husband's daughter's son,
Brother's daughter,	Brother's son,
Sister's daughter,	Sister's son.

All marriages within the above degrees of affinity are declared void. 1777, *c.* 12, *s.* 1.

Persons marrying within the degrees of affinity above-mentioned forfeit from £500 to £200; or may be banished the state forever. *ibid. s.* 2.

The rites of marriage between white persons can only be celebrated by ministers or priests properly ordained, or in the usual manner by Quakers, under the penalty of £500. *ibid. s.* 3.

Ministers who knowingly celebrate the rites of marriage between any persons prohibited by the foregoing table shall forfeit £500; and it is their duty to make diligent inquiry to avoid the same. *ibid. s.* 4.

Persons belonging to this state, marrying with others belonging thereto out of the state, shall be liable to the same punishment or penalty as if the offence was committed in the state. *ibid. s.* 6.

Every minister marrying by license shall annually, in November, return on oath a list of the names and the time when married, to the treasurer of his shore, under the penalty of £200. *ibid. s.* 8.

Ministers marrying any male under twenty-one, or any female under sixteen, and not before married, without the consent of the parent or guardian, forfeit £500. *ibid.* 9.

Ministers wilfully publishing the bands between ser-

vants, or between a free person and a servant, or marrying any such without the master's leave, shall forfeit £50. *ibid. s.* 11.

The price of a marriage license is thirty shillings ($4) current money, twenty-five shillings whereof go to the state, and five shillings are retained by the clerk of the county who issues it. *ibid. s.* 13.

MEDICAL SOCIETY.

"The Medical and Chirurgical Faculty of the state of Maryland," were incorporated in the year 1798; and they are empowered to hold and dispose of real, personal and mixed estate, not exceeding in value $10,000 per annum. They are empowered to elect twelve persons, to be styled "The Medical Board of Examiners for the State of Maryland," any one of whom may grant a license to practise until a board can be held. No person is allowed to practise medicine or surgery, and receive payment, without a license from this board, under the penalty of fifty dollars, recoverable in the county court by presentment or indictment, half to the informer and half to the society. 1798, c. 105.

MORTGAGE.

Mortgage is where a man borrows a specific sum of another, and grants him an estate in fee, on condition that if he, the mortgagor, shall repay the mortgagee the sum borrowed on a certain day mentioned in the deed, that then the mortgagor may re-enter on the estate so granted in pledge; or, as is now the more usual way, that then the mortgagee shall reconvey the estate to the mortgagor.

Form of a Mortgage in Fee, for securing a Debt on Bond.

This indenture, made this ——day of ——, in the year

of our Lord ——, between A. B. of ——, of the one part, and C. D. of ——, of the other part. Whereas the said A. B. by his bond or obligation duly executed, bearing date the —— day of ——, in the year of our Lord ——, stands bound unto the said C. D. his executors, administrators and assigns, in the sum of —— current money, with a condition there underwritten for the payment of the sum of —— current money, with legal interest for the same, on or before the —— day of ——, next ensuing the date of these presents, as by the said bond and condition may more fully appear. Now this indenture witnesseth, that the said A. B. in consideration of the said debt or sum of ——, owing to the said C. D. as aforesaid, and for the better securing the payment thereof, with interest, to the said C. D. his executors, administrators or assigns, according to the condition of the said bond, and also in consideration of the further sum of *(five dollars)* current money of the United States, to him the said A. B. by the said C. D. in hand well and truly paid, at or before the sealing and delivery of these presents, the receipt whereof the said A. B. doth hereby acknowledge, hath granted, bargained, sold, released and confirmed, and by these presents doth grant, bargain, sell, release and confirm, unto the said C. D. and to his heirs and assigns, all that tract of land, situate, lying and being in the county of ——, [*describe the premises;*] to have and to hold the said tract of land, and every part and parcel thereof, with the appurtenances thereunto belonging, unto the said C. D. his heirs and assigns, to the only proper use and behoof of the said C. D. his heirs and assigns, forever, and to and for no other use, intent, or purpose whatsoever; provided always, and it is the true intent and meaning of these presents, and of the said parties hereunto, that if the said A. B. his heirs, executors or administrators do and shall well and truly pay, or cause to be paid, unto the said C. D. his executors, administrators or assigns, the said full sum of —— current money, with legal interest for the same, on or before the —— next ensuing the day of the date of these presents, according to the condition of the above in part recited bond or obligation, without any deduction or abatement whatsoever, then and from thenceforth, these presents, and every matter and thing therein contained, shall cease and be utterly null and void, any thing herein contained to the contary thereof in any wise notwithstanding; and the said A. B. for himself

his heirs, executors and administrators, doth covenant, promise, grant and agree, to and with the said C. D. his executors, administrators and assigns, in manner and form following ; (that is to say) that he, the said A. B. his heirs, executors or administrators, or some of them, shall and will well and truly pay, or cause to be paid, unto the said C. D. his executors, administrators or assigns, the said sum of ——, with legal interest as aforesaid, on the day herein before limitted for payment thereof, without any deduction or abatement whatsoever, as aforesaid, and that the said granted and released premises now are, and at all times from and after default shall happen to be made of or in payment of the said sum of ——, and interest aforesaid, or any part thereof, shall forever be, remain and continue, free and clear, and freely and clearly acquitted and discharged, of and from all manner of former and other gifts, grants, bargains, sales, mortgages, judgements, charges or incumbrances whatsoever, heretofore made, committed, done or suffered, by him the said A. B. and that the said C. D. his heirs and assigns, shall and may from time to time, and at all times, after any such default shall happen to be made in payment of the said sum of ——, and interest as aforesaid, or any part thereof, peaceably and quietly have, hold, occupy, possess and enjoy, all and singular the said premises with the appurtenances, and every part and parcel thereof, without the let, hinderance, molestation, interruption or disturbance, of him the said A. B. his heirs or assigns, or of any other person or persons, lawfully claiming or to claim, by, from or under him, them or any of them ; and further, that he the said A. B. his heirs and assigns, and all and other person or persons, having or lawfully claiming any estate, right, title or interest, of or in said hereby granted and released premises, or any part thereof, shall and will at any time or times after such default made in payment as aforesaid, make and execute, do and suffer, all such further and other acts, matters, things, devices and assurances, in the law whatsoever, for the further and better conveying and assuring of all and singular the premises, with the appurtenances, as hereby granted unto him the said C. D. his heirs and assigns, to the only proper use and behoof of the said C. D. his heirs and assigns, forever, absolutely freed and discharged of and from the proviso or condition herein before contained, and of and from all equity

of redemption, by virtue or color thereof, according to the true intent and meaning of these presents, as by the said C. D. his heirs or assigns, or his or their counsel learned in the law, shall be reasonably advised, devised, or required; and lastly, it is covenanted and agreed upon by and between both of the said parties to these presents, and it is hereby declared to be the true intent and meaning hereof and of the parties hereunto, that until default shall be made in payment of the said sum of ——, and legal interest for the same, as aforesaid, according to the time above limitted for the payment thereof, it shall and may be lawful to and for the said A. B. his heirs and assigns, peaceably and quietly to have, hold, occupy, possess and enjoy, all and singular the said premises above granted and released and every part thereof, with the appurtenances, and to have, receive, and take, the rents, issues and profits thereof, to his and their own particular use and benefit, any thing herein contained to the contrary thereof in any wise notwithstanding.

In witness whereof, &c.

Form of a Mortgage of Goods.

This indenture, made this —— day of ——, in the year of our Lord ——, between A. B. of ——, of the one part, and C. D. of ——, of the other part. Whereas the said A. B. owes and stands justly indebted to the said C. D. in the sum of —— current money, and to secure the payment thereof, is willing to execute these presents. Now this indenture witnesseth, that the said A. B. for and in consideration of the premises, and for and in consideration of the sum of *(five dollars)* current money to him in hand paid by the said C. D. at or before the sealing and delivery of these presents, the receipt whereof the said A. B. doth hereby acknowledge, and thereof and therefrom doth acquit, release, exonerate and forever discharge, the said C. D. his heirs, executors and administrators, and every of them, by these presents, hath granted, bargained and sold, and by these presents doth grant, bargain and sell unto the said C. D. his executors, administrators and assigns, all and singular the goods, furniture and household stuff, herein after particularly mentioned and expressed; (that is to say,) ——, [*here mention the goods mortgaged;*] to have and to hold all and singular the

said *(goods, &c.)* herein before granted, bargained and sold, or mentioned or intended so to be, unto the said C. D. his executors, administrators, and assigns, to the only proper use and behoof of the said C. D. his executors, administrators and assigns, forever; provided always, and these presents are upon this condition, that if the said A. B. his executors, or administrators, shall and do well and truly pay, or cause to be paid, unto the said C. D. his executors, administrators or assigns, the full sum of —— current money, with legal interest for the same, on or before the —— day of ——, in the year ——, then and in such case these presents, and every matter and thing herein contained, shall cease, determine and be utterly void, to all intents and purposes, any thing herein contained to the contrary thereof in any wise notwithstanding; and the said A. B. for himself, &c. [*insert in this place a covenant for the payment of the money due;*] and the said A. B. for himself, his executors and administrators, all and singular the said *(goods, &c.)* by these presents granted, bargained and sold, and every part thereof, unto the said C. D. his executors administrators and assigns, against him the said A. B. his executors and administrators, and against all and every other person and persons whatsoever, shall and will warrant and forever defend by these presents; *and the said C. D for himself, his heirs, executors and administrators, doth covenant, promise, grant and agree, to and with the said A. B. his executors and administrators, that he the said C. D. his executors, administrators or assigns, shall and will immediately, upon the receipt of the said sum of ——, and interest as aforesaid, at the day and time above limitted for payment thereof deliver, or cause to be delivered, unto the said A. B. his executors, administrators or assigns, all and singular the *(goods, &c.)* above granted, and which are now and at the time of the executing of these presents, were received by the said C. D. of and from the said A. B. in as good case, plight and condition, as the same and every of them now are at this present time.

In witness whereof, &c.

[If the mortgagor keeps possession of the property, the mortgage must be acknowledged before a justice of the peace, and recorded within twenty days in the records of the county court. 1729, *c.* 8, *s.* 5, 6.]

* *If the property is left in the hands of the mortgagor, this covenant ought not to be inserted.*

On the loan of money by a foreigner to a citizen of this state, on legal interest, any mortgage made so secure the same, and acknowledged and recorded as the law directs, shall be good and valid, and stand as security according to its purport; and although there should be no covenant or express agreement for the payment of such money, the mortgagor, his heirs, &c. shall be bound to pay as if such express covenant was inserted. 1784, *c.* 58, *s.* 2.

NATURALIZATION.

Any alien may be admitted to become a citizen of the United States, or any of them, in the following manner;

1. He must declare, on oath or affirmation, before a supreme, superior, district or circuit court of some one of the states, or of the territorial districts of the United States, or a circuit or district court of the United States, three years at least before admission, that it was *bona fide*, his intention to become a citizen, and to renounce forever all allegiance and fidelity to any foreign prince or sovereignty whatever, and particularly, by name, the prince or sovereignty whereof such alien may, at the time, be a citizen or subject. *Act of Congress, April* 14, 1802.

2. At the time of application to be admitted, he must make oath or affirmation, before some one of the aforesaid courts, to support the constitution of the United States, and that he doth abjure all allegiance and fidelity, as aforesaid. *ibid.*

3. The court must be satisfied that he has resided within the United States five years at least, and within the state or territory where the court is held at the time one year at least, and it must likewise appear to the court that during that time he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same. The oath of the applicant will not be allowed to prove his residence. *ibid.*

4. If such alien shall have borne any hereditary title, or been of any order of nobility, he must renounce it in court. *ibid.*

No alien, who is a subject of a country at war with the

United States at the time of his application, will be admitted then to be a citizen. *ibid.*

All free white persons, being aliens, must, in order to become citizens of the United States, make registry and obtain certificates in the following manner, to wit: Every person desirous of being naturalized shall, if of the age of twenty-one years, make report of himself, or if under the age of twenty-one years, or held in service, shall be reported by his parent, guardian, master or mistress, to the clerk of the district court of the district where such alien or aliens shall arrive, or to some other court of record of the United States, or of either of the territorial districts of the same, or of a particular state, and such report shall ascertain the name, birth-place, age, nation and allegiance of each alien, together with the country whence he or she migrated, and the place of his or her intended settlement: And it shall be the duty of such clerk, on receiving such report, to record the same in his office, and to grant to the person making such report, and to each individual concerned therein, whenever he shall be required, a certificate under his hand and seal of office of such report and registry; and for receiving and registering each report of an individual or family, he shall receive fifty cents, and for each certificate granted to an individual or family, fifty cents; and such certificate shall be exhibited to the court by every alien who may arrive in the United States on his application to be naturalized, as evidence of the time of his arrival within the United States. *ibid.*

Form of an Application to Court by a Person desirous to become a Citizen.

To the honorable the Justices of —— county (or other) Court, the Petition of A. B. humbly sheweth:

That your petitioner is a free white native of *(naming the place,)* and that it is *bona fide* his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty whatever, and particularly all allegiance and fidelity to the *(naming the prince, potentate, state or sovereignty whereof such alien may at the time be a citizen or subject,)* pursuant to the provisions of an act of congress, passed the 14th day of April in the year 1802, entitled, "An act to establish an uniform rule of

naturalization, and to repeal the acts heretofore passed on that subject." And that your petitioner therefore prays that this petition be received as the declaration required of him by said act, and that your honors will be pleased to have the requisite oath in such case administered to him. And your petitioner, as in duty bound, will pray, &c. Witness his hand, this —— day of ——, in the year of our Lord ——.

A. B.

Form of a Report to be made by an Alien on his first arrival in the U. States.

To W. R. Clerk of —— court: The Report of A. B. respectfully sheweth:

That the said A. B. together with his family, consisting of (*his wife, two sons, one daughter, and one indented servant,*) arrived at the port of (*Baltimore,*) in the United States, on the —— day of ——, and that he sailed from the port of (*Brest,*) in (*France,*) from whence he migrated: That the said A. B. is of (*French*) extraction, was born in (*Brittany*) and is under allegiance to the (*Emperor of the French and king of Italy,*) and that he is now of the age of —— years: That his wife is a (*French*) woman by birth and residence, as are also his children and servant. The names of his children are as follow: (*Jacques*) and (*Jean,*) the sons, and (*Lisette,*) the daughter. The servant is of the name of (*Barbare*). The eldest son is —— years old; the youngest —— years: The daughter is —— years, and the servant is —— years old.

The said A. B. requests that this his report be registered as by the act of congress passed on the 14th April, 1802, entitled, "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject," directs. Witness his hand, this —— day of ——, in the year of our Lord ——.

A. B.

OATHS.

Oath is corrupted from the Saxon word *coth*. It is called a corporal oath, because the person lays his hands upon some part of the Scriptures when he takes it.

If the oath be taken on the common prayer-book, which hath the Epistles and Gospels, it is good enough, and perjury may be assigned upon the oath.

No oath can be altered, or new oath imposed, without an act of Assembly; nor can any oath be administered by any that have not allowance by law.

Where an oath is administered by a person that has lawful authority to tender the same, and it be afterwards broken, yet if it be not in a judicial proceeding, it is no perjury, nor punishable by the common law.

Therefore if one call another a *perjured* man, he may have an action on the case, because it shall be intended to be contrary to his oath in a judicial proceeding; but for calling one a *forsworn* man no action lies; because the forswearing may be extrajudicial, and consequently no perjury in law.

ORDINARY KEEPERS.

The justices of the county courts may grant licences to keep ordinaries. 1780, *c.* 24, *s.* 1.

The chief justice, or an associate justice of any county court, may grant licenses, (within the counties where they respectively reside,) for keeping ordinaries, to be in force till the end of the court next after, for which the person shall pay in propertion, and shall recognize. 1791, *c.* 58.

Form of a License to keep an Ordinary, granted by an Associate Justice.

State of Maryland, *vs.* A. B. C. D. E. F. } 6000 lbs. Tobacco.

MARYLAND, — COUNTY, To WIT: Be it remembered, that on the —— day of ——, before me one of the associate justices of —— county, court personally appeared A. B. C. D. and E. F. and acknowledged themselves to owe and stand indebted to the state of Maryland in the quantity of six thousand pounds of Tobacco, to be made and levied of their goods and chattels, lands and tenements, for the use of the said state; upon condition nevertheless, that if

the said A. B. shall well and truly, in keeping ordinary in the county aforesaid, in every respect comply with the directions of the act of Assembly, entitled, "an act for licensing and regulating ordinary keepers," until the end of the next county court, to be held for said county, on the first Monday of —— next, then this recognizance to be void, otherwise of full force and virtue in law.

Witness my hand. A. S.

Any person not licensed to keep ordinary, who sells liquors, and suffers it to be drank in or about his house or plantation, &c. is liable to a fine of six hundred pounds of tobacco for every offence. 1780, *c.* 24, *s.* 11.

The price of a license to keep an ordinary is six pounds per annum. *ibid. s.* 1. And 5*s.* to the clerk.

Persons omitting or neglecting to renew their license, and continuing to sell liquor as an ordinary keeper, is subject to the same fine as a person selling liquors without license. *ibid. c.* 2. That is, at the rate of 1000 lbs. of tobacco for every month. *ibid. s.* 9.

It is the duty of the justices of the county courts to set and assess the rates and prices of all liquors, &c. to be vended by ordinary-keepers for the year; and such rates are to be set up by ordinary-keepers in their houses for perusal, under the penalty of 600lbs. of tobacco; and if they demand or receive more than such rates, they forfeit 300lbs. of tobacco, and will be nonsuited on bringing an action for higher charges. *ibid. s.* 4.

If such accounts have been paid, they may be compelled by the county court, or by a single magistrate, to restore the sum with costs. *ibid.*

Every ordinary-keeper must provide himself, within two months after obtaining license, (if such ordinary be kept at the court-house in any county,) with six good feather-beds, more than sufficient for the private use of such ordinary-keeper, with sufficient covering for the same, and Indian corn, oats, hay, straw and stabling for ten horses at least: And if at any place in the county other than the court-house, three spare beds, with covering, and sufficient stabling and provender for six horses at least, under the penalty of eight hundred pounds of tobacco. *ibid. s.* 5.

No person but the master or principal of a house can keep an ordinary. *ibid. s.* 6.

If an ordinary-keeper shall keep a disorderly house, it may be, on complaint, suppressed by the justices of the

court, and during the recess by any two justices of the peace till the meeting of the court. *ibid. s.* 7. And persons so suspended, keeping ordinary during the suspension forfeits the same sum as one keeping ordinary without license. *ibid. s.* 8.

ORDERS.

Form of an Order for the payment of Money.

Sir, —— June 4th, 1805.

Please to pay to A. B. the sum of ——, and place the same to my account. Yours, &c. C. D.

Mr. ——.

[No order for money will stand, unless the party on whom it is drawn *accept it in writing.*]

Form of an Order for the Delivery of Goods, &c.

Sir, ——, June 28th, 1805.

Please to deliver to the bearer hereof A. B. the goods lately purchased of you, to wit: [*here name them.*] and oblige yours, &c. C. D.

Mr. ——.

Form of an Order on a Store-Keeper, to let the Bearer have Goods.

Sir, —— June 29th, 1805.

Let the bearer of this order, A. B. have such goods as he may want from your store, to the value of ——, and charge me with the amount thereof. C. D.

Mr. ——.

PERJURY.

Any person corruptly procuring a witness to commit

perjury, in any matter depending in a court of record, or suborning a witness to be sworn, on being lawfully convict, forfeits £40, or, not having goods to the value, to suffer one year's imprisonment without bail, and stand one hour in the pillory. 1692, *c.* 16, *s.* 2.

Any person convict of wilful and corrupt perjury, by subornation or otherwise, in a court of record, &c. forfeits £20, and must suffer six months imprisonment without bail, or, not having goods to the value, to be set in the pillory, and have both ears nailed thereto. *ibid. s.* 4.

No person convicted as aforesaid will be received as a witness in any court of record till such judgement be reversed, in which case he shall recover damages against the person procuring such judgement, by action on the case. *ibid. s.* 3, 4.

PROMISSORY NOTES.

Promissory notes, or notes of hand, are a plain and direct engagement in writing, to pay a sum specified at a time therein limitted to a person therein named, or sometimes to his order or to the bearer at large.

The payee, or person to whom, or whose *order*, a promissory note is payable, may by indorsement, or writing his name on the back of it, assign over his whole property to the bearer, or else to another person by name, either of whom is then called the indorsee; and he may assign the same to another, and so on without end. And a promissory note payable to A. or *bearer*, is negociable, without any indorsement, and payment thereof may be demanded by any bearer of it.

The law considers a promissory note in the light of a bill drawn by a man upon himself, and accepted at the time of drawing. And in case of non-payment by the drawer each indorser prior to the last indorsee is answerable, and can be properly called upon to make satisfaction. But the first indorser has nobody to resort to but the drawer only.

Form of a Promissory Note.

1,000 *Dollars.* ——, *June 8th*, 1805.

Sixty days after date I promise to pay to A. B.

or order, the sum of one thousand dollars for value received.

C. D.

Another form, from two to one.

1,000 *Dollars.* ——, *June 15th*, 1805.

Thirty days after date we, or either of us, promise to pay to A. B. the sum of one thousand dollars for value received.

C. D.
E. F.

RECOGNIZANCE.

A *Recognizance* is an obligation of record, which a man enters into before some court of record or magistrate duly authorised, with condition to do some particular act; as to appear at court, to keep the peace, to pay a debt, or the like.

Form of Recognizance with Security, for the appearance of a witness to testify against an offender.

MARYLAND, —— COUNTY, TO WIT:

On this —— day of ——, in the year ——, personally appears A. B. of —— county, and C. D. of —— county, before the subscriber, a justice of the peace of the said state for the county aforesaid, and acknowledge themselves to owe and stand justly indebted unto the state of Maryland; that is to say, the said A. B. in the sum of —— current money, and the said C. D. in the sum of —— current money, which said respective sums they, and each of them, acknowledge shall be respectively made and levied of their, and each of their bodies, goods, chattels, lands and tenements, to and for the use of the said state, in case the said A. B. shall not make his personal appearance before the county court, to be held at the Court-House, in —— county, on the —— Monday of —— next, and then and there give evidence for and on behalf of the said state against A. B. of —— county, for, &c.

Taken and acknowledged before J. S.

Form of Recognizance without Security, for the appearance of a witness to testify against an offender.

MARYLAND, —— COUNTY, TO WIT:

On this —— day of ——, in the year ——, personally appears A. B. of the county aforesaid, before me the subscriber, a justice of the peace of the said state for the county aforesaid, and acknowledges himself to owe and stand justly indebted to the state of Maryland in the sum of —— current money, which he acknowledges shall be made and levied of his body, goods, chattels, lands and tenements, to and for the use of the said state, in case he the said A. B. shall not make his personal appearance before —— county court, to be held at ——, in and for the county aforesaid, on the —— Monday of —— next, and then and there give evidence for and on behalf of the said state against a certain C. D. for, &c.

Taken and acknowledged before J. S.

[*For various other forms of Recognizance, see the several heads in this book.*]

RELEASES.

Form of a Release of Mortgage.

This indenture, made this —— day of ——, in the year of our Lord ——, between A. B. of —— county and state of Maryland, of the one part, and C. D. of —— county and state aforesaid, of the other part. Whereas the said C. D. by his indenture of mortgage, bearing date on or about the —— day of ——, in the year ——, duly executed, acknowledged and recorded in liber ——, one of the land record books of the general court of the western shore of the state aforesaid, did, for and in consideration of the sum of —— current money, grant, bargain, sell, alien, enfeoff and confirm, unto the said A. B. his heirs and assigns, [*here state the lands as mortgaged,*] and also for the consideration aforesaid, the said C. D.

did bargain and sell, unto the said A. B. his executors, administrators and assigns, the following *(goods and chattels ;)* that is to say, [*state the goods and chattels as mentioned in the mortgage, and recite the mortgage in the past tense to the end thereof*] a reference being had to the above recited deed of mortgage will more fully and at large appear: And whereas the said C. D. hath fully satisfied and paid to him, the said A. B. the abovementioned sum of money, and the interest thereon, he the said A. B. doth agree to execute this instrument of writing, as a full release of the abovementioned *(several parcels of land)* and the *(several goods and chattels.)*

Now this indenture witnesseth, that the said A. B. for and in consideration of the payment of the abovementioned sum of money, and the interest thereon, and for and in consideration of the sum of (*one dollar*) current money, to him in hand paid by the said C. D. the receipt whereof the said A. B. doth acknowledge, and himself to be fully satisfied, contented and paid, hath, and by these presents doth, give, grant, bargain, sell, release, enfeoff and confirm, unto him the said C. D. his heirs, *(executors, administrators,)* and assigns, forever, *(all)* the abovementioned *(several parcels)* of land, and the *(several goods and chattels)* (except ——, which said —— has been bargained, sold, released and confirmed, with the consent of the said C. D. to a certain E. F.) to him the said C. D. his heirs, executors, administrators and assigns, forever, to his and their only proper use and behoof and to and for no other use, intent or purpose whatever.

In witness whereof the said A. B. hath hereunto set his hand, and affixed his seal the day and year first herein before written.

Signed, sealed and delivered in the presence of } A. B.

Form of a Release of Dower.

This indenture, made this —— day of ——, in the year of our Lord one thousand ——, between A. B. of —— county, and state of Maryland, widow of C. B. late of the said county and state, deceased, of the one part, and E. F. of ——, of the other part. Whereas the said C. B. in his life time, by his indenture, bearing date on or about the —— day of ——, for the consideration therein mentioned, did grant, bargain, sell and convey, unto the said E. F. his

heirs and assigns, all that tract or parcel of land, &c. &c. as in and by the said in part recited indenture, reference being thereunto had may more fully and at large appear: And whereas the said A. B. hath, or claimeth to have, a right or title of dower of, in and unto the said tract or parcel of land and premises so granted, bargained, sold and conveyed, to the said E. F. his heirs and assigns; and the said A. B. being, at the time of making the said conveyance, the wife of the said C. B. and under the age of twenty-one years, and so not capable to release or discharge any right or title of dower which she might have or claim, in, to or out of, the said tract or parcel of land and premises, or any part or parcel thereof, in case she should survive her said husband, he the said C. B. did then and there covenant, that the said A. B. should release all the right and title, claim and demand, of dower, which she might have in and unto the said tract or parcel of land and premises in manner aforesaid, when and as soon as she attained the age of twenty-one years. Now this indenture witnesseth, that the said A. B. late wife of the said C. B. deceased, (being at the sealing and delivery hereof above the age of twenty-one years,) for and in consideration of the said covenant so as aforesaid made by the said C. B. her late husband as aforesaid, and also in consideration of the sum of five dollars current money of the United States to her the said A. B. in hand paid by the said E. F. she the said A. B. hath remised, released, and forever quit claim, and by these presents doth freely, clearly and absolutely remise, release, and forever quit claim, unto the said E. F. his heirs and assigns, all and all manner of dower, right and title of dower, whatsoever, which she the said A. B. now hath, may, might, should or of right ought to have or claim, of, in, to or out of, the said tract or parcel of land, &c. or any part thereof, so granted and released, or mentioned to be granted and released, to the said E. F. his heirs and assigns, by the said indenture, and all and all manner of action and actions, writ and writs of dower and right whatsoever; and the said A. B. for herself, her heirs, executors and administrators, and for every of them, doth covenant, promise and grant, to and with the said E. F. his heirs and assigns, by these presents, that neither she the said A. B. or any other person or persons whatsoever for her, or in her name, any manner of action or writ of dower, or any manner of right or title of dower, of, in or to the said tract or parcel of land, &c. or any part

thereof, at any time hereafter, shall or may have claim, challenge or demand, against the said E. F. his heirs or assigns; but that the said E. F. his heirs and assigns, shall and may peaceably have, hold and enjoy, the said tract or parcel of land, &c. so granted and released as aforesaid, without the lawful let, suit, trouble, eviction, interruption or disturbance whatsoever, of the said A. B. her executors, administrators or assigns, or of any person or persons lawfully claiming or to claim by, from or under her, them or any of them.

In witness whereof, &c.

[*To be acknowledged and recorded as other deeds.*]

Form of a Release of a Legacy.

To all to whom these presents shall come, A. B. of ——, and C. B. of ——, send greeting. Whereas E. F. late of ——, deceased, by his last will and testament in writing, bearing date the —— day of ——, which was in the year of our Lord one thousand ——, did, (amongst other pecuniary legacies,) give and bequeath unto his sister D. B. the wife of A. B. esquire, attorney at law, the sum of ——, in trust, nevertheless, to pay and distribute the same to and amongst her three sons, G. H. and I. in such shares and proportions, and in such manner, as she in her own discretion should think fit and convenient, and in case either of her three sons should happen to die before the testator, then in further trust, that she should pay and distribute the said sum of —— to and amongst the survivors of them, in such manner, and in such shares and proportions, as she should think fit as aforesaid, and did constitute and appoint his nephew P. F. sole executor of his said will, as by the said will, duly proved by the said executors, and remaining in the office of register of wills of —— county, reference being thereunto had may more fully appear: And whereas the said I. B. one of the legatees, died several years since, in the life-time of the said testator, and the said D. B. his mother also departed this life in the life-time of the said testator, and the said A. B. her husband, died also in the life-time of the said testator: And whereas the said G. B. and H. B. the two other legatees, are living and of age, and have agreed that the said legacy of —— shall be equally divided between them. Now know ye, that the said G. B. and H. B. do, and each

of them, by these presents, doth respectively acknowledge declare and testify, that on the day of the date hereof they have severally had and received, of and from the said P. P. the sum of —— each, in full payment, satisfaction and discharge, of the said legacy, and of the said sum of ——, so given and bequeathed to the said D. B. in trust as aforesaid, and of and from the said legacy of ——, and every or any part thereof, and all claims and demands touching the same, do, and each of them doth, severally acquit, release and discharge, the said P. P. his heirs, executors and administrators, and every of them, and the estate and effects of the said E. F. forever by these presents.

In witness whereof, &c

RETAILERS OF SPIRITOUS LIQUORS.

No person can retail any wine, rum, brandy, whiskey, or other distilled spiritous liquor, strong beer or cider, without a license as directed by law, under the penalty of £6 for every offence. 1784, *c.* 7, *s.* 7. Persons selling under the quantity of ten gallons are deemed retailers; and no person can retail less than a pint. *ibid.*

The chief justice, or either of the associate justices, in the counties where they respectively reside, may grant licenses to such persons as they shall think fit, to be retailers of spiritous liquors, to continue in force to the end of the next county court, and to be paid for in proportion. 1792, *c.* 7, *s.* 2. But no licence can be so granted to persons to whom the court may have refused to grant such license. *ibid. s.* 5.

Form of a Licence* to retail Liquors, granted by an Associate Justice.

State of Maryland, } MARYLAND, — COUNTY, To WIT:
vs. | Be it remembered, that on the
A. B. } | —— day of ——, before me one of
C. D. } £100 | the assoicate justices of —— coun-
E. F. } | ty court, personally appeared A. B.
C. D. and E. F. and acknowledged themselves to owe

* *Perhaps the word* RECOGNIZANCE *would be more proper both in this case and in that of Ordinary Keepers; but the fact is, the Recognizance implies the license.*

and stand indebted to the state of Maryland in the sum of one hundred pounds current money, to be levied of their goods and chattels, lands and tenements, for the use of the said state; upon condition nevertheless, that if the said A. B. in retailing spiritous liquors in the county aforesaid, from ten gallons to one pint, shall in every respect comply with the directions of the act of Assembly, entitled "an act for founding a college on the Western Shore of this state, and constituting the same with Washington college on the Eastern Shore into one University, by the name of the University of Maryland," until the end of the next county court to be held for said county, on the first Monday of —— next, then this recognizance to be void; otherwise of full force and virtue in law.

Witness my hand. A. S.

Retailers may be suppressed by the courts on complaint of keeping a disorderly house, or permitting liquor sold by them mixed or unmixed, to be drank in or about the house. 1784, *c.* 7, *s.* 9.

Two justices, during the recess of the court, may suspend retailers for keeping a disorderly house, till the meeting of the court, who may determine thereon; and retailers so suspended forfeit 40*s.* if they presume to retail, for every offence. *ibid.*

Licensed retailers must sell only by sealed measures, (except bottled cider, perry and strong beer, of the produce of this state:) And those who neglect to sell by such sealed measures, forfeit 20*s.* for every offence. *ibid. s.* 10.

Retailers are not to sell or barter spiritous liquors between eleven o'clock on Saturday night and five o'clock on Monday morning. *ibid. s.* 12. 40*s.* fine.

The price of licence to retail liquors is £3, and 5*s.* to the clerk. *ibid. s.* 8.

These provisions do not extend to the makers, distillers or brewers of liquor, who may sell any quantity not less than a quart at a time. *ibid. s.* 7.

RUNAWAYS.

Servants travelling by land or water ten miles from home, without a note from their master, &c. are liable to be taken up and suffer as runaways. 1715, *c.* 44, *s.* 3.

Every person seizing or taking up such runaways is entitled to 200lbs. of tobacco. *ibid. s.* 6, 7.

Those who apprehend persons as runaways, must carry them before the next county magistrate, who is to dispose of them as he may deem fit, by securing them, &c. *ibid. s.* 9.

For every runaway servant or slave, taken up in *Pennsylvania* or *Virginia*, and deliverd to some magistrate in this province, the owner shall pay 400lb. tobacco and cask, or 40s. in money to the person so doing, on his producing a certificate from the magistrate or sheriff, of the delivery of such runaway; except runaways brought from *Accomack* into *Somerset* county, or that side of *Virginia* next the river *Potowmack*, for which only 200lb. tobacco, or 20s. shall be paid; for which sums such runaway shall make satisfaction by servitude or otherwise, besides such recompence for absence as the court shall adjudge; and freemen so apprehended, and refusing such payment, shall be committed, till satisfaction be made or secured. *ibid. s.* 20.

Persons taken up as suspected runaways (except negroes and mulattoes) and committed by a magistrate to the sheriff or jailor, shall not be held in custody longer than 6 months; and if such person can, within that time, make proof that he is no servant, he may by any two justices of the county, be discharged on serving the sheriff or jailor so many days as he or she was in custody, or paying ten pounds of tobacco per day, and also paying the person who took him or her up, 200lb. tobacco or 20 days service in lieu thereof; and the sheriff or jailor detaining such person after order of the justices, or expiration of the six months, and payment of fees, shall be liable to an action of false imprisonment. *ibid. s.* 34.

It shall be the duty of the sheriffs of the several counties of this state, and they are hereby respectively required and directed, upon any runaway servant or slave being committed to his custody, to cause the same to be advertised in some public newspaper or papers printed in the City of Baltimore, the City of Washington, and the town of Easton, and in such other public manner as he shall think proper, within 15 days after such commitment, and to make particular and minute description of the cloathing, person and bodily marks, of such runaway. 1802, *c.* 96, *s.* 1.

If the owner or owners, or some person in his, her or their behalf, shall not apply for such Runaway within the space of 60 days from the time of advertising as a-

foresaid, and pay or secure to be paid, all such legal costs and charges as have accrued by reason of apprehending, imprisoning and advertising such servant or slave, it shall be the duty of such sheriff and he is hereby required and directed, to proceed to sell such servant or slave and immediately to give public notice by advertisements, to be set up at the court-house door and such other public places as he shall think proper, in the county where such servant or slave is in custody, of the time and place for sale of such servant or slave, by him to be appointed, not less than 20 days after the time limitted as aforesaid has expired, and at such time and place shall proceed to sell and dispose of such servant or slave to the highest bidder. *ibid. s.* 2.

The sheriff shall, under the penalty of 50 dollars for every such offence, make out, on oath, and return to the justices of the levy court, at their next session after the sale of any servant or slave, an account, stating the time of the commitment, the time of sale, the name of the purchaser and terms of sale, and the expences and costs of advertising, securing and keeping, and the amount for which such servant or slave has been sold, and out of the money arising from such sale to retain the amount of such costs and charges as he is by law entitled to, and no more, and the balance, if any, to be paid to the justices of the levy court who are hereby authorised and directed to pay the same to the owner of such servant or slave, if such owner shall apply for it within 2 years from the time of such sale, and if it shall not be applied for within 2 years as aforesaid, then the money so paid to the levy court shall be applied to the use of the county; provided, that any servant or slave sold as aforesaid shall not be carried or transported out of this state until after 2 years have elapsed from the time of such sale, and any person or persons who shall carry, or cause to be carried out of this state within the time limitted as aforesaid, any such servant or slave, shall incur and be subject to the like penalties as persons are who shall transport or carry any free negro out of this state. *ibid. s.* 3.

If any sheriff shall refuse or neglect to compiy with the directions of this act, he shall for every such refusal or neglect, forfeit and pay the sum of 100 dollars. *ibid. s.* 4.

SERVANTS AND SLAVES.

No person shall deal with any servant, whether hired

or indented, or without leave from the master or owner, under the penalty of 2000lbs. of tobacco. 1715, *c.* 44, *s.* 11.. If the goods dealt for exceed the value of 1000lbs. of tobacco, the owner may have an action of damage against the party dealing for the same; and persons not being able to satisfy the same, shall on conviction, be punished by whipping with thirty stripes. *ibid. s.* 12, 13.

Indentures made by any servant during servitude, are void. And masters not using their servants with humanity, may, on conviction in a county court, be fined a sum not exceeding 1000lbs. of tobacco for the first and second offence, and for the third offence the court shall set the servant free. But if the master deems that the servant deserves more than ten lashes at any one time, (which the law allows him to give) he may carry such servant before a magistrate, who may order the same, not exceeding thirty-nine lashes. *ibid. s.* 19, 21.

Servants feloniously taking or purloining their master's goods, under the value of 1000lbs. of tobacco, shall be adjudged guilty of felony; and on conviction will be adjudged to pay fourfold by servitude and also be whipped and pillored. *ibid. s.* 33.

Persons permitting or authorising slaves belonging to them, to go at large, and hire him or herself within this state, shall incur the penalty of £5 current money per month, except ten days at harvest. 1787, *c.* 33, *s.* 1.

Any person who shall hire a slave by contract with such slave, shall incur a penalty of £5 current money per month, except ten days at harvest as aforesaid. *ibid. s.* 2.

Whenever sentence of death shall be passed upon any slave or servant, and the same shall be commuted or changed by the governor, the valuation of such slave or servant made by the court passing such sentence, shall be paid by the treasurer of the Western Shore, in virtue of an order to be drawn by the governor in favor of the owner, or owners of such slave or servant. 1802, *c.* 92.

Slaves shall in all cases in which a free negro or mulatto or other person of color, free or freed, is charged with stealing goods, or with the receipt of stolen goods, be admitted to give evidence for or against the person accused. 1801, *c.* 109.

Any slave charged with pilfering or stealing, may be brought before a single magistrate; who on proof thereof may award such punishment by whipping, according to the

nature of the crime, as he shall think fit, not exceeding forty lashes. 1717, *c.* 13, *s.* 6.

Any negro, or other slave, convicted before a single magistrate of striking any white person, such magistrate may cause one of the offender's ears to be cropped. 1723, *c.* 15, *s.* 4.

The owner of any plantation may warn any strange negro, or other slave, (not sent by their owners on lawful occasions,) to be gone to their owners; and on refusal or delay so to do, may correct such slave by whipping not exceeding thirty-nine lashes. *ibid. s.* 5.

Run away, outlying slaves, refusing to surrender themselves, or making resistance against persons legally empowered to take them up, may be shot, killed or destroyed by such persons. *ibid. s.* 7.

Persons stealing negroes or other slaves, to suffer death. 1737, *c.* 2, *s.* 4.

The full value of slaves who may be executed for crimes or die after condemnation, &c. shall be paid to the owner by the public treasurer. *ibid. s.* 5, 6.

Slaves testifying falsely, shall have both ears cut off and receive seventy-eight stripes. 1751, *c.* 14, *s.* 5.

Slaves guilty of rambling, dealing or going abroad by night, or riding horses by day without leave, may be punished by the county court by whipping, cropping, branding, &c. *ibid. s.* 8.

Officers are justified when any slaves shall happen to be slain, when attempts are made to apprehend them and they resist. 1753, *c.* 26.

Any free person convicted of enticing a slave to run away (where the slave shall actually have run away) shall forfeit the full value of the slave to the owner; and in case of inability to pay, shall suffer one year's imprisonment, without bail. 1751, *c.* 14, *s.* 10.

It is not lawful to import or bring into this state by land or water, any negro, mulatto or other slave, for sale, or to reside within this state, and any person brought into this state as a slave contrary to law, shall thereupon cease to be the property of the person or persons so importing, &c. and shall be free. 1796, *c.* 67, *s.* 1.

The right of travelling persons is not to be affected by this act. *ibid. s.* 4. But any citizen of the United States, coming into this state with intention of settling therein, may bring into the state at the time of their coming, or within one year thereafter, any slaves which

they held at the time of their removal, and which slaves or the mother or mothers of them, shall have been resident of the United States, or some one of them, three whole years next preceding such removal. *ibid. s.* 2.

By 1797, *c.* 1, this privilege is extended to the executors or administrators of such persons dying within one year after removal, for one year after such death, and is further extended to the issue of such slaves born after the removal of the person so dying; also to guardians of infants entitled on such persons dying within one year after removal and to male infants so entitled after the age of twenty-one, and to female infants after the age of sixteen in the same manner, and to include the issue, as in the case of executors.

[*For the form of a Warrant for harboring Servants or Slaves, see page 99 of this book.*]

SHERIFFS.

Sheriffs are elected every third year, by the people of each county in the state. Two persons are to be voted for in each county, the one of whom having the majority of votes, or if both have an equal number, either of them at the descretion of the governor, to be commissioned by the governor for the said office; and having served for three years, such persons shall be ineligible for the four years next succeeding. Bond with security to be taken every year, and no sheriff can be qualified to act before the same is given. In case of death, refusal, resignation, disqualification, or removal out of the county, before the expiration of the three years, the other person chosen as aforesaid shall be commissioned by the governor to execute the office for the remainder of the three years; and in case of his death, &c. before the expiration of the time, the governor, with the advice of the council, may nominate and commission a fit and proper person to execute the office for the residue of the three years, the said person giving bond and security according to law. No person is eligible to the office of sheriff for a county but an inhabitant of said county, above the age of twenty-one years, and having real and personal property in the state above the value of £1000 current money. *Constitution, art.* 42.

Sheriffs are liable to be proceeded against if they do not conform to the act of 1780, *c.* 10, by taking bail-bonds from criminals, &c. [*See pages* 130 *and* 131 *of this book.*]

It is the duty of the sheriffs in each county of the state to receive and safe keep in their respective gaols all such prisoners as may be committed under the authority of the United States, until they shall be discharged by the laws thereof, under the like penalties as in the case of prisoners committed under the authority of the state; the United States to pay for each prisoner fifty cents per month during the time of confinement, to be paid to the sheriff for the use of the county at the time the prisoner is released. 1789, *c.* 30.

Sheriffs being called upon to make return of a writ of execution by any court of record or the court of chancery and failing therein, judgement may be entered against them. 1794, *c.* 54, *s.* 1.

Sheriffs may be amerced if, when called upon to return any original writ, they shall omit to do it; or for not producing before the court any defendant or defendants before arrested upon any original writ or mesne process; and be entered judgement for the amount of the amerciament. *ibid. s.* 2.

Sheriffs satisfying plaintiffs, are entitled to the original cause of action or judgement, as fully as the plaintiff, &c. *ibid. s.* 3.

The sheriff's bond is to be taken on some day between the eighth of October and the first day of January in each year, in the respective county courts, or out of court before the chief justice, or two associate justices thereof, and in case of death, sickness, absence, removal, resignation or disqualification, of one of the associate justices, the other shall call in two justices of the peace, who shall, with him, judge of the sufficiency of the securities offered by the sheriff, and attest the execution of the said bond; which shall hereafter be taken after the form following.

Form of a Sheriff's Bond.

Know all men by these presents, that we —— and ——, of —— county, in the state of Maryland, are held and firmly bound unto the state of Maryland, in the full and just sum of ten thousand pounds current money, to be paid to the said state, or its certain attorney; to the which

payment well and truly to be made and done, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents: Sealed with our seals, and dated this —— day of ——, in the year ——.

The condition of the above obligation is such, that if the above bounden ——, as sheriff of —— county, do and shall well and faithfully execute the same office in all things appertaining thereto, and shall also render to the several officers within this state a just and true account of all fees placed in his hands for collection, within the time limitted by law, and shall also well and truly pay all sums of money received by him, and also collect and pay all public dues, fines and forfeitures, which are due or belonging to the state, and shall also well and faithfully execute and return all writs, process and warrants, to him directed and delivered, and shall also pay and deliver to the person or persons entitled to receive the same, all sum or sums of money, tobacco, goods, chattels, or property, by him levied, seized or taken, agreeably to the directions of the writ, process or warrant, under which the same shall have been levied, seized or taken, and also shall keep and detain in safe custody all and every person or persons committed to his custody, or by him taken in execution, or who shall be committed for want of bail, without suffering them or any of them to escape or depart from his custody, and shall also satisfy and pay all judgements which shall or may be rendered against him as sheriff, and shall also well and truly execute and perform the several duties required of or imposed upon him by the laws of this state, then this obligation to be void and of none effect, otherwise to remain in full force and virtue in law.

This bond must be attested by the judge or justices by whom it is taken, and delivered to the clerk of the county, to be recorded. *ibid. s.* 8.

Judgement may be entered against sheriffs for default in not making return of fines, &c. 1795, *c.* 74, *s.* 4. They are likewise answerable for fines, except where the party is insolvent. *ibid. s.* 7.

Sheriffs refusing to pay over money or tobacco to those for whose use it had been collected, may be compelled on application to court. 1797, *c.* 43, *s.* 1.

All sheriffs must take the oath prescribed by act of Assembly 1797, *c.* 87, *s.* 2, besides those prescribed by the constitution of the state. [*See the head of Coroner, page* 226.]

Sheriffs are not to permit their deputies to summon jurors whom they have not directed them to summon. *ibid. s.* 7.

The sheriff shall not summon any person as a juror to two general or county courts successively. 1797, *c.* 87, *s.* 3.

If any deputy sheriff or deputy collector intrusted by his principal to levy and collect any money or tobacco, due from the inhabitants of any district or hundred where he is appointed to serve, shall neglect or refuse to render and settle his accounts with his principal when thereto lawfully required, according to the terms of their contract, the respective county courts, upon motion made to them in behalf of the principal sheriff, &c. on producing a stated account of his demand, supported by satisfactory proof, may order a judgment to be entered, and an immediate execution awarded thereon against the person or property of such deputy, to levy and compel payment; provided that a copy of such account and 20 days notice of such intended application, be delivered in writing to such deputy as before directed; and provided also, that in case of controversy, and the demand of a trial thereof by a jury, such proceedings shall be had as are herein before provided for the trial thereof at the same term, and judgement shall be rendered on the verdict, and an execution awarded, as aforesaid; and no writ of error, *supersedeas*, injunction or appeal, shall be allowed; but this shall not be construed to deprive the parties of their proper remedy upon their contract, if they shall choose to proceed at law or equity upon the same. 1797, *c.* 43, *s.* 2.

The sheriff is an officer of great eminence in the administration of justice, and ought to be favored in law before any private person. If a sheriff be slain in doing his duty, it is murder in him who kills him; nor is he bound, if he be resisted, to fly to the wall, as a private man is. The old sheriff is sheriff of the county till the new sheriff be sworn; and the arrest is good by the old sheriff till a new commission is shewn him, or other sufficient notice given.

When the new sheriff is complete in the office, he must take over from his predecessor all his prisoners and writs precisely by view, and by indenture to be made between them, wherein all the causes he has against every prisoner must be set forth and delivered, or else the new sheriff

is not chargeable with them; but if the old sheriff dies, the new sheriff in such case shall at his peril take notice of all executions which are against any that he finds in gaol, and of all writs.

All the writs which are set over in the indenture between the sheriffs, if they have been executed by the old sheriff, then they must be returned by him, or in his name, and endorsed under by the new sheriff, thus:

This writ as endorsed, was delivered to me by A. B. esquire, late sheriff, my predecessor, at his going out of office. per C. D.

Bonds taken by sheriffs or sub-sheriffs are void unless endorsed thereon the account for which the same passed. 1715, *c.* 46, *s.* 13. The same provision exists with respect to mortgages, promissory notes, and inland bills. 1769, *c.* 15, *s.* 2.

On taking fees, sheriffs must deliver to the party, on demand, a fair account in words at length, of the services, &c. *ibid. s.* 4.

They are not to charge more than single imprisonment fees, though the party is in prison at the suit of several persons. 1715, *c.* 46, *s.* 15.

On the service of an execution for money or tobacco, the sheriff shall charge and receive at the rate of seven and an half *per cent.* for the first £10 in money, or 1000lbs. of tobacco, and three *per cent.* for the residue, in the same specie the execution shall issue for. 1790, *c.* 59, *s.* 2.

Sheriffs fees for the imprisonment of persons criminally charged, are excepted from the deduction of one-fourth to be made from officers' fees chargeable to the state or any county. 1787, *c.* 34, *s.* 2.

Sheriffs are empowered to receive and collect, by execution or otherwise, all officers fees put into their hands for collection within the time limitted by law, in the last year of their offices; and all fees which become, or shall become due to them for official services performed in the second year of their offices, in as full and ample manner as the said sheriffs might or could have received and collected the same during the time of their being sheriffs. 1738, *c.* 31, *s.* 1.

The several sheriffs are required to take care of all public letters and packets, and expeditiously convey them, according to their directions, to the next sheriff of the adjacent county, and to give a receipt therefor, and endorse the time of receiving them. 1790, *c.* 51, *s.* 5. In case of in-

ability, sickness, or absence of the sheriffs, their deputies are to perform the duty. *ibid. s.* 13.

Upon the death, resignation, &c. of any sheriff, the person appointed to succeed him shall give bond according to law within sixty days from the date of his commission. 1799, *c.* 91.

Sheriffs must return attachments, issued from one county to another to compel the attendance of witnesses, to the county from which they were issued. 1795, *c.* 26, *s.* 2.

The judgement of death against a criminal must be executed by the sheriff pursuant thereto, on a warrant from the governor. *ibid. c.* 82, *s.* 1.

It is the duty of sheriffs to provide the judges of election with blank books properly ruled, and ballot boxes to contain the votes of the freemen.

In case of an election to fill a vacancy in congress or in the house of delegates, the warrant must go to the sheriff of the county; who must appoint the day for holding the same, giving ten days exclusive notice. 1799, *c.* 50, *s.* 6. The sheriff must serve a copy of the warrant on each of the judges three days before the time appointed, under the penalty of ten dollars; and the election shall be held within fifteen days after the warrant shall be received by the sheriff. *ibid.*

No sheriff shall summon any appraisers on laying a writ of *fieri facias*, issued by any justice of the peace, on the property of any debtor on a judgement, or on any supersedeas thereon. 1799, *c.* 86.

The high sheriff, in making an under-sheriff, implicitly gives him power to execute all the ordinary offices of the sheriff himself, that can be transferred by law, as serving process, execution, and the like.

List of Sheriff's Fees.

	lbs. of tobacco.
Serving writ, and return,	27
Taking bail bond,	14
Collecting officers' fees, for every hundred,	6 *per cent.*
For every commitment and releasement,	16
Empanneling a jury,	90
Serving *scire facias*, including the persons summoned,	23
Serving citation,	23
Executing a warrant of resurvey, per day,	75
Summoning evidences to prove the bounds of land, for each person summoned,	23

	lbs. of tobacco.
If empowered to swear evidences, for every witness sworn by him,	10
Serving a Subpœna and return,	23
For keeping a prisoner in gaol and finding him victuals, per day,	12
Serving a writ of possession in ejectment, and return,	112
Serving an ejectment and return,	51
Every election for one or more members,	1000
Serving an attachment of contempt and return,	38
Serving writ of estrepement, and return,	75
Serving *ne exeat*, and return,	200
Serving a copy of declaration or short note,	4
Summoning appraisers to value goods taken by attachment, *fieri facias*, or replevin, for each appraiser summoned,	23
Swearing the said appraisers, for every oath,	10
Serving an attachment on judgement or execution, and return,	8
Executing a writ of *ad quod dammum*, or, *melius inquirendum*, and return, per day,	75
Empannelling a jury on the same,	180
Swearing the said jury, for every oath,	10
Taking an inquisition and returning the same with the said writ,	75
Serving a writ of restitution and return,	112
Empannelling a jury to inquire of a forcible entry and detainer,	180
For each person summoned as an evidence on the same,	23
For summoning chain-carriers, each, if required,	23
For swearing chain-carriers, every oath,	10
For an arrest on a warrant and return in criminal cases,	18
For serving *duces tecum*, and return,	18
Return on an attachment when mesne process,	8
For laying an attachment in any garnishee's hands, for each garnishee,	23
For all goods and chattels which any sheriff shall attach and take into his possession, or wherewith he shall be chargeable, the same fees as on executions.	
Returning *fieri facias* or replevin, each,	8
The same fees on a *fieri facias* or replevin, as upon attachments.	

	lbs. of tobacco.
Also the same fees on appraisement and sale of goods distrained and sold for rent.	
Serving writ *retorno habendo*, and return,	75
Serving writ of distringas, and return,	75
Serving and return of *elegit* or *liberate*,	75
Empannelling jury on *elegit* or extent,	180
For swearing the same, each,	10
Serving writ of restitution, and return,	112
Summons in partition, for every peron summoned, and return,	23
Serving a writ of partition, and return,	26
Empannelling jury thereon,	160
Swearing the jury, each,	10
Attendances, per day,	75
Serving an attachment in partition, and return,	90
Returning writ of inquiry of damages,	75
Empannelling jury thereon,	180
Swearing the same, each,	10
Attendance, per day,	75
Proclamation of rebellion, and return,	90
Serving withernam and return,	75

And the same fees allowed as upon replevins.

STRAYS.

Owners of horses are bound to keep them within good enclosures. 1715, *c.* 31, *s.* 1. Persons who own and do not so keep up horses, are liable to have them shot, after being twice warned by the party on whose property they may trespass. *ibid. s.* 2.

Whenever horses break into any enclosure, and their owners be not known, the party aggrieved may take them up and carry them before the next magistrate, who must take an account of the marks, &c. *ibid. s.* 4.

Form of a Certificate for a trespassing Stray, to be given by a Justice of the Peace when brought before him.

—— County, To Wit:

I hereby certify that A. B. of said county brought be-

fore me, (as a stray trespassing on his enclosures,) a black gelding, about six years old, fifteen hands and one inch high, a star on his forehead, and a white spot on his off buttock, branded on the near shoulder N. R. shod before and has his tail cropped; paces, trots and canters, and has been worked in geers. Given under hand of me, one of the justices of the peace in and for said county, this —— day of ——, ——.

J. S.

To the clerk of —— county court }

By 1769, *c.* 18, the party grieved must set up such account, describing the marks, at the court-house door and other public places within five days, and cause them to be recorded, and also to be published in the news papers, the expences to be paid by the owners: Persons acting contrary to forfeit ten pounds.

Stoned horses taken up going loose, are to be impounded; the owner to pay five shillings therefor on notice thereof. 1715, *c.* 81, *s.* 12.

Stoned colts or horses unbroke, being found loose in the woods, or out of enclosure, may be shot. *ibid. s.* 13.

SURETY OF THE PEACE.

It seems clear, that whenever a person has just cause to fear, that another will burn his house, or do him a corporal hurt, as by killing or beating him, or that he will procure others to do him such mischief, he may demand the surety of the peace against such person, and a justice of the peace is bound to grant it, upon the party's giving him satisfaction upon oath, that he actually is under such fear, and that he has just cause to be so, by reason of the other's having threatened to beat him, or lain in wait for him, and that he doth not require it out of malice or vexation.

TESTIMONY PERPETUATED.

Testimony may be perpetuated by giving twenty days

notice to the opposite party, or if absent, to his agent or attorney, or (if he has left none,) by setting up notice at the court-house twenty days beforehand, warning the party to appear before a county justice, who is to take the depositions of the attending witnesses; and such depositions, with proof of the notice, is to be lodged with the clerk of the county where taken, to be recorded. 1779, *c.* 8, *s.* 2.

Less than twenty days notice is sufficient where the party is not likely to live, or about to march out of the state as a soldier, &c. at the discretion of the justice. *ibid. s.* 6.

But this is not to extend to proving the boundaries of land, or to alter the law in force for that purpose. *ibid. s.* 4.

Form of Proceedings to perpetuate Testimony.

Mr. T. C. Executor of the last Will and Testament of S. B. deceased,

Take Notice,

That pursuant to the directions of an act entitled, "An act establishing a mode to perpetuate testimony," we shall on the —— day of ——, in the year ——, at the house of ——, in —— town in —— county, in the state of Maryland, at —— o'clock, take the depositions of F. G. and J. J. before J. S. esquire, a justice of the peace for the said county, for the purpose of proving that a mulatto woman named ——, and a negro woman named ——, otherwise called black ——, both of them formerly the property of J. T. deceased, and mentioned together with their children in the last will and testament of S. B. were both given and actually delivered by the said J. T. in his life time, to the said S. then the wife of L. D. in the presence of witnesses, and that the said J. T. was never after the gift and delivery aforesaid in the possession of them or either of them, after the time aforesaid; and that the said mulatto woman and negro woman at the time of the gift and delivery aforesaid, were small young girls, and that all of the children of the said —— and ——, which are mentioned in the last will and testament of the said S. B. were born since the said gift and delivery and since the property of the said —— and —— was out of the said J.

T. As we apprehend ourselves to be interested in establishing the above facts, we mean at the time and place aforesaid to take the depositions of the said F. G. and J. J. for the purpose of proving the same, when and where you are requested to attend.

Yours, &c.

T. N.
M. B.
H. Z.
W. J.

To Mr. T. C.

—— County, To Wit:

On this —— day of ——, ——, appears before the subscriber A. B. and makes oath, that he served the foregoing notice on T. C. executor of the last will and testament of S. B. deceased, some day in the month of —— last.

J. S.

Maryland, —— County, To Wit:

On this —— day of ——, ——, at the house of ——, agreeably to the prefixed notice, before me, one of the justices of the peace of the said state for the county aforesaid, appears F. G. and deposeth and saith, that in the deep snow, he thinks in the year ——, he this deponent was at the house of J. T. deceased, and at that time in the presence of others, heard said T. say to L. D. that he had given him yellow —— and black ——, and that he would give him no more, and would do with the rest what he pleased when he made his will: This deponent further saith, that both —— and —— were small girls at that time, and that they were both sold at the sheriff's sale after the death of L. D. that they always from the above time mentioned, to the death of L. D. were held by him as his slaves, and lived with him as such: This deponent further saith, that he was very frequently at the house of J. T. and in his company, and never after the said time heard him say that he claimed said negroes, or either of them. Sworn to, and subscribed by the said deponent, before me, and in presence of T. C. executor of the last will of S. B. deceased.

F. G.

J. S.

And now at this same time and place aforesaid appears before me J. J. and deposeth and saith, that very shortly

after the marriage of L. D. to S. B. he saw yellow —— and black ——, in the possession of said L. D. that —— was small, and this deponent supposes was about five years old, and —— about eight years old, that he always understood said —— and —— were the property of L. D. and believes the general impression in the neighborhood was so: This deponent further saith, that he was well acquainted with J. T. deceased, and was one of said T's tenants for a number of years; that he never heard T. say that the negroes or either of them were his, and never heard him say (that he recollects) he had given the said negroes to L. D. and that he this deponent always considered them as the property of L. D. Sworn to and subscribed by the said deponent, before me, and in the presence of T. C. executor of the last will and testament of S. B. deceased.

J. J.

J. S.

Such depositions as the foregoing are generally taken where persons are about to remove out of the state, or are likely to die, whose testimony may be necessary to establish a fact relative to property, &c. and a transcript of the depositions under seal, whether taken before or after suit, may be read in evidence on any arbitration or trial, if such deponents die or cannot be had to attend, of which proof must be made.

WARRANTS.

Under the head "*Arrest*," (page 103 of this book) the reader will find the nature of warrants, and in what manner, on what occasions, and on what evidence, they are to issue, laid down at full length. Under other heads, likewise, many forms of warrants are laid down for the use of justices of the peace, &c. It is, therefore, only deemed necessary in this place to lay down a form of a warrant for release of a prisoner by a plaintiff, and one in a case of sabbath-breaking, &c.

Form of a Warrant from a plaintiff to a Sheriff and Gaoler, to discharge a defendant.

To G. C. Esquire, sheriff of —— county, J. L. sendeth greeting. Whereas J. D. of —— is now in your custody, by virtue of a writ of *capias ad satisfaciendum*, issued out of —— court at the suit of me the said J. L. for certain *damages* and costs in the said writ mentioned, for which said *damages* and costs I have received full satisfaction. Now therefore these are to will and authorise you, that you immediatly discharge and release the said J. D. of and from the execution aforesaid, and of and from all writs and process whatsoever, at my suit, and of and from all or any restraint and imprisonment by occasion of any execution, writ or process, heretofore charged against him by me the said J. L. upon your being paid your fees, and for so doing this shall be your sufficient warrant.

Given under my hand and seal, the —— day of ——, in the year of our Lord ——.

Form of a Warrant for profane Swearing, Sabbath-breaking, or Drunkenness.

MARYLAND, —— COUNTY, TO WIT:

On this —— day of ——, ——, before me one of the justices of the peace for the state, in and for the county aforesaid, appears A. B. and makes information on oath, that C. D. did on the ——, profanely utter an oath (or curse, or get drunk,) contrary to the act of Assembly in such case made and provided.

You are hereby commanded forthwith to apprehend the said C. D. and bring him before me or some other justice of the peace, to answer the said information, and further to be dealt with as required by said act of Assembly. Hereof fail not. Given under my hand and seal, the —— day of ——, ——. J. S. Seal.

To J. B. Constable.

Form of a Certificate of Conviction on return of the preceding Warrant.

—— County, To Wit:

I, the subscriber, a justice of the peace for the state of Maryland, in and for said county, do hereby certify that C. D. a freeholder, (or respectable person) was convicted before me for (profanely swearing one oath, or drunkenness) contrary to act of Assembly in such case made and provided; and the said C. D. had not money wherewith to pay the sum of (2s. 6d. or 5s.) the fine by me imposed for said offence, by virtue of the act of Assembly, entitled, "An act to punish blasphemers, swearers, drunkards, sabbath-breakers, and for repealing the laws heretofore made for the punishing such offences." Given under my hand and seal, the —— day of ——, ——.

J. S. Seal.

To W. R. Clerk of —— County Court.

Sabbath-breaking implies working on Sundays, or causing children, or servants, to work, gaming, fishing, &c. and the fine is 200lbs. of tobacco on conviction. Proceedings in case of Sabbath-breaking the same as the foregoing.

WILLS, &c.

The law respecting Wills, &c. is laid down in this book, at large, under the head "*Administration;*" all that is requisite, therefore, to introduce here, is a correct form of a Will, Codicil, &c. These have been selected from the most approved forms.

Form of a Will and Testament.

In the name of God, Amen. I, A. B. of —— county, in the state of Maryland, being in perfect health of body, and of sound and disposing mind, memory and understanding, [or, *being sick and weak in body, but of sound, &c.*] considering the certainty of death, and the uncertainty of the time thereof, and being desirous to settle my worldy affairs, and thereby be the better prepared to leave this

world when it shall please God to call me hence, do therefore make and publish this my last will and testament, in manner and form following; that is to say.

First and principally, I commit my soul into the hands of Almighty God, and my body to the earth, to be decently buried at the discretion of my *executrix* herein after named, and after my debts and funeral charges are paid, and my wife's thirds taken out, I devise and bequeath as follows.

[*Pecuniary legacy.*]

I give and bequeath unto E. F. of —— county, the sum of *one thousand* dollars.

[*Devise of land in fee-simple.*]

Item. I give and devise unto A. my eldest son, my plantation whereon I now dwell, known by the name of ——, containing by patent about —— acres, more or less, to him the said A. and his heirs and assigns, in fee-simple.

[*Devise of land in fee-tail.*]

Item. I give and devise unto B. my second son, a tract of land lying in —— county, called ——, containing —— acres, more or less, to him the said B. and the heirs of his body lawfully begotten.

[*Devise of a lease-hold for the term unexpired.*]

Item. I give all that my lease-hold plantation in —— county, known by the name of ——, containing —— acres, more or less, to my youngest son C. during his natural life, and from and after his decease, I give the same to my daughter D. her heirs and assigns, for and during the remainder of my estate and interest therein.

[*Request to a daughter, and disposal of the profits for her education and maintenance.*]

Item. I give and bequeath to my daughter D. aforesaid, two negroes, the one called Bess, and the other called Kate, as also, the sum of *two thousand* dollars, to be paid her by my *executrix* herein after named when she arrives to the age of *sixteen* years, or day of marriage, which

shall first happen, until which time my said *executrix* shall retain the profits arising from the labour of the negroes, and interest of the money so bequeathed, and apply the same towards the education and maintenance of my said daughter.

[*Bequest to two grand-daughters with survivorship.*]

Item. I give and bequeath unto each of my two grand-daughters, I. and K. children of my daughter E. the sum of *one thousand* dollars, to be paid to them, and each of them, respectively, when they come at their respective ages of *sixteen* years, or day of marriage, which shall first happen; and I direct that the said sums of money be put out to interest on bond, with good securities, by my *executrix*, and that the profit arising therefrom be applied towards their education and maintenance respectively, until their said ages or marriage, as aforesaid, and in case either of them shall die before the age of twenty-one, or marriage, then I give the share of her so dying unto the survivor of them, and if both of my said grand-daughters shall happen to die before they attain the age of twenty-one, or marriage, then I give and bequeath the whole of the said several sums, and all interest that shall be due thereon, unto my daughter D.

[*Bequest to an imprudent son.*]

Whereas my son O. B. hath highly offended and disobliged me, and all his friends and relations, by his late improvident marriage, and in other parts of his conduct in life hath rendered himself unworthy to be called or taken notice of as a son, I do therefore hereby declare, that the *one thousand* dollars which he owes me by bond, and from which I do by these presents acquit and discharge him, shall go in full satisfaction of all right, title, interest, claim and demand whatsoever, which he may, or can any way pretend to have or claim, of, in or to all or any part of my real or personal estate.

[*Bequest to feme-covert.*]

Item. I give and bequeath unto my daughter L. C. the wife of G. C. *two thousand* dollars, during her life only, and after her decease to her present children then living,

to be equally divided between them, under this express proviso nevertheless, that my *executrix* shall not be compelled to pay into the hands of the said G. C. any thing herein bequeathed unto my said daughter L. C. but that the same shall remain and continue in the hands of my said *executrix*, *her* executors, or such person or persons as *she* shall appoint during the life of the said G. C. and that during his life, the profits thereof shall be paid to the said L. C. and that any receipts or writings witnessing the payment of such profits to the said L. C. and signed by her, though covert, shall be sufficient discharges to my *executrix*, or person or persons by her appointed as aforesaid.

[*Devise of the residue.*]

Item. I devise and bequeath all the rest and residue of my estate, both real and personal, to be equally divided among my sons A. B. and C. and daughter D. to them their heirs and assigns forever, in equal portion, share and share alike.

[*Appointment of an executrix, and revocation of former wills.*]

And lastly, I do hereby constitute and appoint my dear wife C. B. to be sole *executrix* of this my last will and testament, revoking and annulling all former wills by me heretofore made, ratifying and confirming this, and none other, to be my last will and testament.

In testimony whereof I have hereunto set my hand, and affixed my seal, this —— day of ——, in the year of our Lord one thousand ——.

A. B. Seal

Signed, sealed, published and declared, by A. B. the above named testator, as and for his last will and testament, in the presence of us, who at his request, in his presence, and in the presence of each other, have subscribed our names as witnesses thereto.

D. G.
O. R.
S. T.

Form of a Codicil.

Whereas I, A. B. of —— county, have made and duly executed my last will and testament in writing, bearing date the —— day of ——, in the year ——, which said last will and testament, and every clause, bequest and devise therein contained, I do hereby ratify and confirm, (saving and excepting such clauses, bequests and devises, therein mentioned, as are by me herein after revoked and made void,) and being desirous to alter such parts thereof, and of making additions thereto, do therefore hereby make this my codicil, which I will and direct shall be taken and held as a part of my said will and testament, in manner and form following; that is to say,

[*First devisee dying without heirs.*]

Whereas since the making of my said will, my eldest son A. is dead, without heirs, now I hereby give and devise to my second son B. the plantation called ——, devised to my son A. in and by my said last will and testament, to him my said son B. and his heirs and assigns, in fee-simple.

[*New legacy.*]

Item. I give and bequeath unto H. H. of —— county, the sum of *five hundred* dollars.

[*Revocation of a legacy, and bequeathing a less sum.*]

And whereas by my said will I did give and bequeath unto E. F. of —— county, the sum of *one thousand* dollars, now I do hereby revoke the said legacy, and do give unto him the said E. F. the sum of *five hundred* dollars, in lieu thereof, and no more.

[*Bequest to wife exclusive of dower.*]

And whereas the property which I now possess hath been chiefly acquired by the joint industry and frugality of my dear wife and myself, and thinking some addition to her dower or thirds necessary, the better to enable her to live with convenience and comfort, I do therefore, by this my codicil, give and bequeath unto my said wife,

during her natural life, all interest accruing annually, semi-annually or quarterly, upon *fifty* shares standing in my name, and which I now possess, in the bank of Columbia; it being expressly my intention that this bequest to my said wife is to be understood and considered as exclusive of, and in addition to, her dower or thirds, which she is entitled to by law.

[Revocation of executor's appointment, and constituting another.]

And whereas I did constitute and appoint my dear wife to be executrix of my said will, now I do by this my codicil will and direct, that my said wife shall not be executrix of my said will, and do hereby revoke my appointment of her as such, and in her room and stead do hereby constitute and appoint my son B. to be sole executor of my said will, as fully and effectually as if he, and no other person, had been originally, in and by my said will, constituted and appointed executor thereof.

In testimony whereof I have hereto set my hand and affixed my seal, this—— day of ——, in the year ——.

A. B. Seal.

Signed, sealed, published and declared, by A. B. the above named testator, as and for a codicil to his last will and testament, in the presence of us, who at his request, in his presence, and in the presence of each other, have subscribed our names as witnesses thereto.

D. H.
G. M.
N. R.

FINIS.

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STATE OF MARYLAND, —— COUNTY, TO WIT:

Whereas it appears to me the subscriber, one of the justices of the peace of the state of Maryland, in and for the county aforesaid, by the information on oath of A. B. of said county, that the following goods, that is to say, *(here enumerate and describe them)* have, within *(two or three days)* last past been feloniously taken, stolen and carried away out of the house of the said A. B. in said county, by some person or persons unknown; that the said A. B. hath probable cause to suspect, and doth suspect, that the said goods, or part thereof, are concealed in the dwelling-house of C. D. of said county: These are therefore, in the name of the said state, to authorise and require you, with necessary and proper assistants, to enter in the day-time into the dwelling-house of the said C. D. in said county, and there diligently search for said goods, and if the same, or any part thereof, shall be found upon such search, that you bring the goods so found, and also the body of the said C. D. before me, or some other justice of the peace for the county, to be disposed of and dealt with according to law.

Given, &c. J. S. Seal.

Errors.—Page 43, for 'protest,' read *probat*. Page 113, for 'assignor was not a surety,' read *assignee*, &c.

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